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UNITED STATES BANKRUPTCY COURT

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SOUTHERN DISTRICT OF NEW YORK

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Case No. 12-12020-mg

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In the Matter of:

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RESIDENTIAL CAPITAL, LLC, et al.,

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Debtors.

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United States Bankruptcy Court

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One Bowling Green

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New York, New York

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August 19, 2013

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8:59 AM

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B E F O R E:

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HON. MARTIN GLENN

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U.S. BANKRUPTCY JUDGE

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2 Trial RE: FGIC Settlement

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. Good morning,
3 everybody.

4 MR. KERR: Good morning, Your Honor.

5 THE COURT: So the time is proponents 75 minutes,
6 objectors 254 minutes. That's 329 minutes. We're 31 minutes
7 short of the 6 hours for Friday. Lunch will have to be
8 shortened accordingly.

9 Mr. Kerr?

10 MR. KERR: Good morning, Your Honor. Charles Kerr of
11 Morrison & Foerster on behalf of the debtors. A couple of
12 housekeeping items first --

13 THE COURT: Okay.

14 MR. KERR: -- before we begin. The parties, over the
15 weekend were working on designations and cross-designations.
16 And an issue arose that I was asked to raise with Your Honor.
17 And with respect to objections that were raised in the
18 depositions --

19 THE COURT: Yes.

20 MR. KERR: -- on the record, do you want the parties
21 to try and resolve all those, or do you just want to make the
22 designations come in and you can look at them at the time.

23 THE COURT: Well, you really ought to try and resolve
24 them. I'll deal with ones that can't be resolved.

25 MR. KERR: Okay, that's fine, Your Honor.

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1 THE COURT: I won't hear argument about them, but
2 resolve what you can.

3 MR. KERR: Okay. And I think -- and the parties who
4 still have some issues with that --

5 THE COURT: That's fine.

6 MR. KERR: -- we'll try to do it over lunch.

7 THE COURT: Okay, that's fine.

8 MR. KERR: The second thing is, Your Honor, I think
9 yesterday there was some -- FGIC had identified some documents,
10 and they just want -- now they want to formally move them into
11 the record --

12 THE COURT: That's fine.

13 MR. KERR: -- and so I think Mr. Sidman's going to do
14 that.

15 THE COURT: Okay. Mr. Sidman?

16 MR. SIDMAN: Good morning, Your Honor. Howard Sidman,
17 Jones Day, for FGIC.

18 I'm just following up with the four exhibits --

19 THE COURT: Right.

20 MR. SIDMAN: -- to the July 31st, 2013 Dubel witness
21 statement. As you may recall, the Dubel witness statement was
22 previously admitted into evidence on Friday. We have conferred
23 with the objectors and I'm prepared to offer into evidence the
24 four exhibits to the Dubel witness statement. Those exhibits
25 are as follows: Debtors' Exhibit 53, Debtors' Exhibit 226, and

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1 Debtors' Exhibit 227. These three documents are public court
2 filings and are not being offered for the truth of the matter
3 asserted.

4 THE COURT: All right. Any objections?

5 MR. BAIIO: No, Your Honor.

6 MR. SIDMAN: And then there's a fourth exhibit --

7 THE COURT: Okay.

8 MR. SIDMAN: -- Your Honor --

9 THE COURT: Well let me just -- with respect to 53,
10 226 and 227, they're in evidence.

11 (Dubel exhibits were hereby received into evidence as Debtors'
12 Exhibits 53, 226, 227, as of this date.)

13 THE COURT: All right. What's the fourth exhibit?
14 Okay, and the fourth?

15 MR. SIDMAN: And the fourth is Exhibit 311 --

16 THE COURT: Okay.

17 MR. SIDMAN: Which is a timeline of FGIC settlement
18 discussions during the mediation process.

19 THE COURT: All right. Any objections?

20 MR. BAIIO: No, Your Honor.

21 THE COURT: All right. Exhibit 311 is in evidence as
22 well.

23 (Settlement timeline was hereby received into evidence as
24 Debtors' Exhibit 311, as of this date.)

25 THE COURT: Okay, thank you very much, Mr. Sidman.

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1 MR. SIDMAN: Thank you, Your Honor.

2 THE COURT: All right, Mr. Kerr, next witness?

3 MR. KERR: Next witness, Your Honor, is Robert Major.

4 THE COURT: Okay. Good morning, Mr. Major. If you
5 would raise your right hand, you'll be sworn.

6 (Witness sworn)

7 THE COURT: Please have a seat. There's a pitcher of
8 water there, if you need it, and there are cups, okay?

9 MR. ESPANA: Good morning, Your Honor. Mauricio
10 Espana from Dechert for the Bank of New York Mellon.

11 THE COURT: Okay.

12 MR. ESPANA: Your Honor, at this time we'd move in Mr.
13 Major's declaration, which is Exhibit 101. It's the binder to
14 your left. Along with a few supporting exhibits. A few of the
15 exhibits already have been moved in. But the ones that remain
16 are 116, 118, 119, and 170. And Exhibits 119 and 170 are not
17 being offered for the truth.

18 THE COURT: Any objections?

19 MR. BAIIO: No, Your Honor.

20 THE COURT: Thank you. All right. Exhibits -- and no
21 objection to the decl -- to the witness statement either?

22 MR. BAIIO: No, Your Honor.

23 THE COURT: All right. So Exhibits 101, 116, 118,
24 119, and 170 are all admitted in evidence.

25 (Mr. Major direct testimony was hereby received into evidence

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1 as Debtors' Exhibit 101, as of this date.)

2 (Mr. Major exhibits were hereby received into evidence as

3 Debtors' Exhibits 116, 118, 119, 170, as of this date.)

4 MR. ESPANA: Thank you, Your Honor.

5 THE COURT: Thank you very much.

6 Cross-examination?

7 MR. BAIO: No questions, Your Honor.

8 THE COURT: Okay.

9 UNIDENTIFIED SPEAKER: No question from Freddie Mac
10 either, Your Honor.

11 THE COURT: You're excused.

12 Next witness, Mr. Kerr. That would be Mr. Pfeiffer?

13 MR. KERR: Correct, Your Honor. The next witness is
14 Allen Pfeiffer.

15 THE COURT: All right, Mr. Pfeiffer, if you would
16 raise your raise your right hand and be sworn?

17 (Witness sworn)

18 THE COURT: All right, please have a seat. You've got
19 your own water there, I see. Okay.

20 MR. WEITNAUER: Your Honor, Kit Weitnauer, Alston &
21 Bird.

22 THE COURT: Good morning, Mr. Weitnauer.

23 MR. WEITNAUER: For Wells Fargo. The settling parties
24 would like to tender into evidence the direct testimony of
25 Allen M. Pfeiffer, which is Exhibit 109. And that's that.

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1 THE COURT: Any objections?

2 MR. BAIO: No, Your Honor.

3 THE COURT: All right. Exhibit 109, direct testimony
4 of Mr. Pfeiffer, is admitted into evidence.

5 (Mr. Pfeiffer direct testimony was hereby received into
6 evidence as Debtors' Exhibit 109, as of this date.)

7 THE COURT: Cross-examination, Mr. Baio?

8 MR. BAIO: Yes, Your Honor. Joseph Baio on behalf of
9 the investors.

10 CROSS-EXAMINATION

11 BY MR. BAIO:

12 Q. Good morning, Mr. Pfeiffer.

13 A. Good morning.

14 Q. Mr. Pfeiffer, your assignment in connection with what you
15 are here for today, was to assess the reasonableness from a
16 financial perspective and from the perspective of the FGIC
17 insured trusts of the settlement agreement. Is that correct?

18 A. That's correct.

19 Q. So you and Duff & Phelps did your analysis from a
20 financial perspective, and not from any other perspective. Is
21 that correct?

22 A. We looked at it from a financial perspective, but we
23 included qualitative factors that impact the financial
24 perspective as well.

25 Q. You were not asked or tasked with the responsibility to

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1 assess whether the settlement agreement was in the best
2 interests of the FGIC insured trusts, correct?

3 A. We were not.

4 Q. You were not asked and you were not tasked with the job of
5 assessing whether the settlement agreement was in the best
6 interests of investors in the trusts, correct?

7 A. Those are decisions that are made by the trustee. We
8 provide for them all the advice they need in order to make that
9 decision with a full set of analysis that we can provide to
10 them.

11 Q. But you were not asked whether the settlement agreement
12 was in the best interests of the investors in the trusts,
13 correct?

14 A. We were not.

15 Q. That wasn't your job?

16 A. That was not our job.

17 Q. Nobody hired you to do that?

18 A. Again, we were hired as financial advisor. And as is made
19 clear in my declaration, the role is -- the role is summarized
20 in my declaration, and I'm trying to find the paragraphs --
21 yeah, it's at paragraphs 12 and 13.

22 Q. Yes. I've just asked, no one asked you to do that. Isn't
23 that correct?

24 A. No one asked us to do the trustees' job for them. We did
25 not --

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1 THE COURT: Mr. Pfeiffer, it'll be much faster if you
2 just answer the question.

3 A. No, we did not --

4 THE COURT: It's a very clear question. Just give you
5 answer to it, and let's move on.

6 THE WITNESS: Okay. I thought I already answered the
7 question. No, we were not determining the trustees' role for
8 the best interests of the trusts.

9 Q. And you didn't advise the trustees, independent from what
10 your assignment was -- you didn't advise the trustees that the
11 settlement agreement was in the best interests of the investors
12 in the FGIC trusts, correct?

13 A. Correct.

14 Q. You didn't provide any opinion to your clients --

15 THE COURT: How many times does he have to say it?

16 MR. BAIIO: This is a different question, Your Honor.
17 First I did the trusts, now the trustees --

18 THE COURT: Go ahead.

19 Q. It was the trustees' job to determine, in your view,
20 whether the proposal was in the best interests of the trusts,
21 correct?

22 A. I'm not here to opine on what the trustees' job is or
23 isn't. I know what we did.

24 Q. You also didn't tell the trustees where in the range of
25 reasonableness you believed the settlement proposal that FGIC

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1 made fell, correct?

2 A. That's not correct.

3 Q. I'd ask you to look at your testimony, which is Exhibit
4 FR, at page 152.

5 THE COURT: Is this the testimony or the deposition?

6 MR. BAIIO: I'm sorry, his deposition, Your Honor.

7 Can you hand the book to our opponent.

8 MR. WEITNAUER: Are there other things in the book
9 that are in front of him?

10 Thank you. Thank you so much.

11 THE WITNESS: I'm sorry, where'd you ask me to look?

12 Q. At page 152 line 23. I asked you the following --

13 A. I'm sorry, what exhibit? Oh, FR? Okay.

14 Q. Yes sir. Tell me when you're there.

15 A. Page 152 -- one two three -- I'm joking. I got it.

16 Q. Line 23:

17 "Q. And you did not tell the trustees where in the range you
18 believed the settlement proposal fell, the commutation payment,
19 correct?

20 "A. Correct."

21 You gave that testimony, didn't you?

22 A. If you look at the quest --

23 THE COURT: That's a yes or no.

24 A. If you look at the question --

25 THE COURT: That's a yes or no, Mr. --

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1 A. Oh, we made that statement, yes.

2 Q. And it was true when you said it, correct?

3 A. I answered correct -- I testified -- my deposition was
4 true and it still is true, yes.

5 Q. You did not do any evaluation of the likelihood that the
6 investors would receive more under the rehabilitation plan than
7 they would under the settlement agreement. Isn't that correct?

8 A. I'm sorry, could you repeat the question?

9 Q. You did not do any evaluation -- you or Duff & Phelps --
10 of the likelihood that investors would receive more under the
11 rehabilitation plan than they would under the settlement
12 agreement. Isn't that correct?

13 A. We did not do a likelihood analysis. We just provided the
14 advice and the context around the advice.

15 Q. And you provided a range of estimated recoveries under the
16 FGIC rehabilitation plan, correct?

17 A. Yes.

18 Q. Okay. And at the time that you spoke to the trustees, in
19 May -- and was that May 13th, 2013 that you had a presentation
20 to the trustees?

21 A. That was the presentation that is referred to in our
22 report, yes.

23 Q. At that time, and even thereafter, is it fair and accurate
24 to say, sir, that you couldn't say whether a 240-million-dollar
25 payment, as opposed to a 253-million-dollar payment, fell

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1 within the range of reasonableness?

2 A. Our job was to assess 253 and no other number.

3 Q. And you couldn't say, and you weren't asked, whether a
4 190-million-dollar payment would fall within the range of
5 reasonableness. Isn't that correct?

6 A. That was not -- our assignment was not to assess 190
7 million.

8 Q. And you were never asked that. And as you sit here today,
9 you cannot say whether 190-million-dollar payment would be
10 within the range of reasonableness, correct?

11 A. As I just testified, we were not asked to assess 190, and
12 that's not my assignment here today.

13 Q. In fact, sir, you did not establish a range to determine
14 whether the number was reasonable or unreasonable. Is that
15 correct?

16 THE COURT: I don't understand the question.

17 MR. BAIO: Okay.

18 THE WITNESS: I don't understand it either.

19 Q. Did you establish a range such that, if anything fell
20 outside of that range, it would not be reasonable?

21 A. That was not the goal of our assignment, to establish
22 specific ranges that -- to assess, you know, what number would
23 be within and outside the range. That was not the assignment
24 that we had.

25 Q. That was not what you did?

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1 A. We did establish a range, and we talked about the numbers
2 and the various factors that impact that range, but our
3 assignment was not to determine whether a particular number was
4 under the range or higher than the range. Our assignment was
5 to assess whether the commutation proposal was within the range
6 of reasonableness.

7 Q. Let's turn to the May 13th presentation. The presentation
8 you made -- you and your colleagues -- was telephonic and on
9 the Web. Is that correct?

10 A. It was a Web conference, yes.

11 Q. And it occurred before the May 15th report was finalized.
12 Is that correct?

13 A. May 13th, it was the date of the Web conference, which is
14 two days before May 15th, yes.

15 Q. So at the actual Web conference, is it fair and accurate
16 to say that you presented what appears in Exhibit 123?

17 A. On -- no.

18 Q. I'm sorry, it is not 123. It is that correct?

19 A. It is substantially the same as 123, but, you know, likely
20 had "Draft" written on it, and a few words may have been
21 different.

22 Q. Can you look in your book for Exhibit P?

23 A. Okay, I have it.

24 Q. Was that the PowerPoint that you used to present at the
25 time that you spoke to the trustees on May 13th?

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1 A. No, it was not.

2 Q. Okay. There's yet another draft that you used?

3 A. We shared the draft early in May, and that might be
4 Exhibit P or Q -- I'm not looking right now over what the
5 differences are between the two exhibits. But we shared a
6 draft presentation in the first few days of May and received
7 some feedback. On May 13th, we then had a Web conference which
8 included the presentation slides, which were substantially
9 similar to the slides that you see on Exhibit 123, but were
10 still in draft form. And in the days -- in the two days
11 between May 13th and May 15th, we finalized our presentation.
12 We don't have a hard copy of the actual exact presentation that
13 was shared on the 13th.

14 Q. You don't have it anywhere? You've never produced it to
15 us and you don't have it?

16 A. It was a Web conference.

17 Q. Yes.

18 A. And we were making slight changes as the conference -- as
19 we presented. And like I said, in the day or two after, we did
20 not keep that version. It's substantially similar to the
21 Exhibit 123 that's dated May 15th that's in front of you, like
22 I said before.

23 Q. Well, is it also substantially similar to P? Can you tell
24 which one was used? Because you will see that -- and you may
25 recall this -- if you look at page 7 on Exhibit P, the base

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1 scenario range that you came up with was 200 million to 320
2 million, and that's different from the number that you came up
3 with two days after you spoke to the trustees, which as you'll
4 see is 220 million to 340 million. Which one did you -- which
5 number did you present of those two, which range, under the
6 base scenario?

7 A. My recollection is that the numbers were, if not
8 identical, were substantially similar to the presentation that
9 is dated May 15th.

10 Q. So you believe it was the 220 to the 320, not the 200 to
11 the 300? Is that correct?

12 A. I think I just said that that's -- to the best of my
13 recollection that's what I think it was.

14 Q. Okay.

15 A. And that's only for the base case. There's a stress case
16 on there too which includes 190 to 250.

17 Q. I didn't ask about it.

18 MR. BAIO: I think we will end up going too long,
19 Your Honor.

20 THE COURT: Ask your next question, Mr. Baio.

21 Q. Can you kindly look at -- in Exhibit 123, page 5?

22 A. Okay.

23 Q. And by the way, this conference took about an hour to an
24 hour and a half. Is that correct? That is, the May 13th
25 presentation?

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1 A. The Web conference was -- yes, between an hour and an hour
2 and a half, I believe.

3 Q. And you can't recall precisely what you said during that
4 presentation, correct?

5 A. I can't recall precisely, no.

6 Q. And you can't recall what the trustees said. Isn't that
7 correct?

8 A. I recall that there were questions. I recall some of the
9 questions. But I don't -- I can't recall precisely who asked
10 what.

11 Q. Okay. Now, page 5, which you are looking at, includes
12 FGIC's own calculations leading up to the proposed settlement
13 offer that was made as part of the commutation, correct?

14 A. It was pro -- it was presented to us as FGIC's
15 calculations, or the Kathy Patrick's group and FGIC's
16 present -- calculation. It's not our calculations.

17 Q. And it's true that the first sentence that appears at the
18 top is accurate, that is, the proposal outlined a cash payment
19 of approximately 250 million dollars by FGIC upon emergence, in
20 exchange for --

21 THE COURT: It says 253. You said two --

22 MR. BAIIO: Pardon me, Your Honor.

23 THE COURT: You said 250. It says 253.

24 MR. BAIIO: Oh, 253. I'm sorry, Your Honor.

25 Q. -- by FGIC upon emergence, in exchange for the ability for

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1 FGIC to assert approximately 597 million dollars of allowed
2 claims at ResCap. That's accurate, correct? That's what the
3 proposal did?

4 A. That summarizes the proposal, yes.

5 Q. That's the quid pro quo as presented by FGIC?

6 A. There are obviously more elements to it. But that's a
7 summary of the proposal.

8 Q. And these -- the figures that appear on this page on the
9 right-hand side -- and let's leave aside the haircut figure --
10 that came from FGIC's own calculations in connection with its
11 rehabilitation plan, correct?

12 A. I can't speak to exactly where FGIC got each number from,
13 but these numbers were provided by FGIC.

14 Q. And you understood that it came out of the work that they
15 did in connection with their rehabilitation plan, correct?

16 A. Some of the numbers come from the rehabilitation plan. At
17 least that's the way I see the numbers and I connect it to the
18 rehabilitation plan. It seems to have come from that plan.
19 Other of the numbers -- some of the other numbers, I just don't
20 know where they came from. You'd have to ask FGIC.

21 Q. It's true, you understood that the stated goal of the
22 rehabilitation plan is to treat FGIC's policyholders in a fair
23 and equitable manner in order to remove the causes and
24 conditions that made the rehabilitation proceeding necessary.
25 Isn't that correct?

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1 A. That sounds like language from the plan.

2 Q. Okay. And you also understood that the intention of the
3 rehabilitation plan was to provide for all of the value of FGIC
4 other than administrative expenses and other costs to go to
5 FGIC policyholders until the policyholders are paid in full.
6 You understood that?

7 A. I have to go back to my report to see if that's an exact
8 quote. But it's --

9 Q. Well, I'm asking first independent from the language -- if
10 you want to look you can, but --

11 A. So what are you asking, exactly?

12 Q. Do you understand that the rehabilitation plan provides
13 for all of the value of FGIC, other than those expenses I
14 identified, to go to FGIC's policyholders until the
15 policyholders are paid in full?

16 A. Yes.

17 Q. And you also understand that no claimants junior to
18 policyholders receive any payment until the policyholders are
19 paid in full in accordance with the rehabilitation plan,
20 correct?

21 A. Correct.

22 Q. Okay. And you understand that FGIC, in providing the
23 rehabilitation plan, had to act prudently and conservatively.
24 Isn't that correct?

25 A. I don't know if they had to act that way. But I believe

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1 that the plan refers to those words.

2 Q. And you understood that FGIC presented a base case and a
3 stress case, correct?

4 A. Correct.

5 Q. And you understood that in presenting its base case, FGIC
6 was giving the expected case. Isn't that correct? From its
7 perspective?

8 A. Correct.

9 Q. And as you understood it, FGIC expected the base case to
10 occur more so than the stress case, correct?

11 A. I would say that that's correct.

12 Q. Okay. If we look at page 5, going back to Exhibit 123,
13 there are a series of numbers on the right-hand side, and there
14 are assumptions on the left. Do you see that?

15 A. I'm sorry, page 5?

16 Q. Yes. Exhibit 123.

17 A. And what was the question?

18 Q. There are numbers that appear on the right-hand side and
19 assumptions that appear on the left-hand side. Do you see
20 that?

21 A. There are numbers on the right-hand side, and the left
22 lists some of the assumptions that help explain the numbers on
23 the right. To the --

24 Q. Okay.

25 A. -- extent that we understood what the numbers were.

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1 Q. And this was something that FGIC presented to you. Is
2 that correct? These numbers and these assumptions?

3 A. I -- they e-mailed -- it was e-mailed to us, and then we
4 had the opportunity to ask questions to FGIC in a meeting that
5 we had with them and Lazard.

6 Q. And you provided this page to the trustees during the May
7 13th presentation, correct?

8 A. Correct.

9 Q. And you explained what it was. Is that correct?

10 A. We explained that this is a page that came from FGIC.

11 Q. So if we look at the right-hand side -- or actually the
12 left-hand side, on an assumption, the first assumption is
13 "Initial cash payment percentages of 17.25 percent." Do you
14 see that?

15 A. I do.

16 Q. And you understand that figure came right out of the
17 rehabilitation plan and the Miller affidavit. Is that correct?

18 A. Yes.

19 Q. And the next assumption, "Base case payout to
20 policyholders of 28.5 percent," that was, in fact, based on the
21 rehabilitation plan and employing a fifteen percent discount
22 rate. Is that correct?

23 A. That's what the words say, yes.

24 Q. And that's what you understood FGIC had done, correct?

25 A. I understood that as it says on the page, that's what they

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1 were attempting to display, yes.

2 Q. And the fifteen percent was the average or the midpoint
3 between the ten percent that they had used and the twenty
4 percent that they had used in the Miller affidavit and in their
5 rehabilitation plan. Is that correct?

6 A. That's correct.

7 Q. So when you look at the right-hand side, the initial cash
8 payment percentage, that comes right out of the rehabilitation
9 plan and the Miller affidavit, correct? 17.25 percent?

10 A. I think you just asked me that. I think yes.

11 Q. Okay. And the base case, which is B -- I just want to go
12 through the math quickly -- that also comes from the same
13 place, the average -- the midpoint of the discount rate,
14 fifteen percent?

15 A. Again, that's what -- that's what this page presents the
16 number as coming from. We could not replicate that number, but
17 that's what it says it came from.

18 Q. But you believed that FGIC was acting in good faith when
19 it provided those numbers. Isn't that correct?

20 A. I have no reason to believe otherwise.

21 Q. The next number, then, is the ResCap sponsored RMBS claim
22 per FGIC. That also comes right out of their analysis in
23 connection with the rehabilitation plan, which they were
24 required to do, as you described in your report, to be sure
25 that there is a fair and equitable manner of distributing the

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1 funds. Is that correct?

2 A. If you're quoting from my report, I'd have to look at --

3 Q. Paragraph 17.

4 A. Okay.

5 THE COURT: Is he looking at his testimony or his
6 report?

7 MR. BAIO: Paragraph 17 of his report -- of his --

8 THE COURT: Testimony.

9 MR. BAIO: -- direct, Your Honor.

10 THE COURT: Thank you.

11 A. Paragraph 17 says, as we mentioned earlier, that the
12 stated goal of the rehab plan is to treat FGIC policyholders in
13 a fair and equitable manner.

14 Q. And the number that appears on this page, page 5 of the
15 presentation, for ResCap sponsored RMBS claims, came out of the
16 rehabilitation plan, correct?

17 A. Are you referring to the 1850?

18 Q. Yes.

19 A. I'd have to look at the rehabilitation plan, but I believe
20 it has.

21 Q. Okay. And the same thing with respect to the total
22 projected claims in the POC. Do you see that? That comes
23 right out of FGIC's rehabilitation plan and the calculations in
24 the Miller affidavit, correct?

25 A. You know, I don't think that these numbers came from the

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1 plan. Now that I think about it, I don't think it came from
2 the plan or from the Miller affidavit. I think that the Miller
3 affidavit and the plan were focused on all the policyholders
4 for FGIC and did not provide specific emphasis, to my
5 recollection, related to the ResCap sponsored RMBS claims. And
6 I'm quite -- I'm relatively confident that these numbers were
7 not in the Miller affidavit. And I don't think they're in the
8 rehab plan either.

9 Q. But the calculations are based on FGIC's work in
10 connection with what they did in the rehabilitation plan.
11 That's what you understood, correct?

12 A. These numbers were provided by FGIC and the page was
13 provided by FGIC. And I'm not sure what else to tell you about
14 them except that they calculated them likely as part of their
15 calculations in assessing the rehabilitation plan or the impact
16 it would have on the ResCap sponsored RMBS claim. But I -- but
17 I can't tell you, you know, exactly what they did in arriving
18 at these numbers.

19 Q. Well, when you met with them and you asked them, did you
20 say, are these numbers that you just pulled out of the air? Or
21 they numbers that you believe? Did you ask?

22 A. We probably didn't ask it in that tone. But they
23 believed -- they believed that the ResCap sponsored RMBS claim
24 and the total projected claims in the proof of claim are
25 approximated by these numbers on this page.

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1 Q. And you believe they gave you those numbers in good faith
2 in connection with the offer that they were making. Isn't that
3 correct?

4 A. Yes.

5 Q. And that's true of all the numbers that appear in that
6 first upper chart, including the future estimated claims. It's
7 your understanding that they provided them to you because they
8 believed they were accurate?

9 A. My understanding is that they provided us what they
10 believed to be accurate numbers and assumptions, and that the
11 numbers on the top part of the page, including the 481, are
12 their estimates of the nominal amount -- the notional amount of
13 the claims from the FGIC insured ResCap trusts.

14 Q. Okay. And did you examine them at all about whether
15 their -- what the basis was for those numbers? Did you
16 challenge any of the numbers? Did you accept them? What did
17 you do?

18 A. We looked at them. Obviously, to the extent that we
19 didn't understand -- to the extent that the claim number was
20 very different from our numbers, we would have asked more
21 questions. But I think with the 481 and the 1270 of estimated
22 unpaid claims, was relatively consistent with the midpoint of
23 our claim estimates. And so to the extent that we did some
24 analysis we were focused more on what we thought the projected
25 claims would be. And I think the fact that FGIC came up with

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1 future estimated claims and total projected claims that are
2 consistent with our numbers, provided us with a source of
3 comfort that our numbers were accurate.

4 Q. Well, that's not what I asked, but I just asked what you
5 had asked them at that meeting. But let me ask you this --

6 A. I thought you asked what I did in connection with those
7 numbers.

8 Q. Let's go to the chart that appears under "Commutation
9 Considerations". There are then a series of calculations, and
10 those are calculations that were done by FGIC, correct, based
11 upon the math and the assumptions that appear above?

12 A. Those were presented to us by FGIC.

13 Q. They then applied what they identify as a factor
14 percentage of unpaid payout, sixty percent. Do you see that?

15 A. I see the number, yes.

16 Q. And you refer to that as the haircut, on the left-hand
17 side of this page -- a haircut of forty percent on unpaid
18 payout claim estimates. Do you see that?

19 A. I do.

20 Q. And that was a phrase that you or people at D&P decided to
21 use with respect to the forty percent. Isn't that correct?

22 A. The phrase "haircut", are you referring to?

23 Q. Yes.

24 A. The phrase "haircut" is a way of saying discount, and it
25 is a phrase that the trustees and their counsel became

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1 accustomed to us using as we referred to discounts in the
2 broader RMBS claim assessments.

3 Q. Yeah, well, my question sir, is that you and people at D&P
4 elected to describe that as a haircut, didn't you?

5 A. I don't recall if FGIC or Lazard referred to that word in
6 their meetings or if we used the word first. But it
7 characterizes a haircut of forty percent on the page.

8 Q. Look at your report -- I'm sorry, your direct testimony,
9 which is Exhibit 109, at paragraph 68.

10 A. I'm sorry --

11 THE COURT: Page 30.

12 Q. Page 30 -- 30 going over to 31.

13 A. Okay.

14 Q. If you look at the tail end of that sentence, it says,
15 "D&P gave a shorthand description as a haircut of forty percent
16 on unpaid payout claims estimates." Do you see that?

17 A. What paragraph? I'm sorry.

18 Q. Paragraph 68.

19 A. Okay.

20 Q. The end of the paragraph --

21 A. Oh, okay.

22 Q. -- which carries over to page --

23 A. Page --

24 Q. -- 31. Where you said in your direct testimony, "D&P gave
25 a shorthand description as a haircut of forty percent on unpaid

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1 payout claim estimates." Do you see that?

2 A. I see that.

3 Q. So does that -- was that accurate when you submitted this
4 in late July?

5 A. Yes.

6 Q. And does that refresh your recollection that in fact, D&P
7 gave that shorthand description, the haircut?

8 A. The words on the page were written by Duff & Phelps and we
9 provided that description on the page 5 of the presentation. I
10 just -- what I said to you before is I don't recall if the word
11 was also used in the context of the meeting we had with FGIC,
12 if they also used that same term or if we invented it. It was
13 certainly used as a shorthand description of the discount on
14 the page in the presentation that we provided on May 13th.

15 Q. And D&P gave it that shorthand, right? I mean, that's
16 what you said in your direct?

17 A. What I'm trying to make sure you understand is that the --
18 if you go back to Exhibit 123 and you look at page 5, the
19 numbers on the right-hand side or the entire presentation,
20 the -- not just the numbers, but the way the numbers are
21 characterized on page 5, all derive exactly from the page which
22 we received from FGIC. We did not ad lib or create any context
23 or any create any description except to the extent that we
24 provided a -- those letters on the right-hand side of page 5
25 and the descriptions which are listed on the left. So my

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1 direct testimony is and was that we provided that shorthand
2 description on the page. The number -- the description on the
3 left was provided by Duff & Phelps and not FGIC.

4 Q. That was my question. Now, you met with Duff & Phelps to
5 talk about --

6 THE COURT: He is Duff & Phelps.

7 Q. -- the proposal, correct?

8 THE COURT: He met with FGIC.

9 MR. BAIIO: I'm sorry. Yes, Your Honor. He is Duff &
10 Phelps.

11 Q. You met with FGIC --

12 A. I'm not Duff -- you know --

13 Q. You are a Duff & Phelps --

14 A. -- I'm a partner at Duff & Phelps.

15 Q. -- I think we can call you a Duff & Phelpian.

16 You, in fact, met with FGIC to discuss their proposal,
17 correct?

18 A. Members of my team met with FGIC.

19 THE COURT: Did you? Did you?

20 THE WITNESS: I was not present.

21 MR. BAIIO: Okay.

22 Q. Did you direct members of your team to tell FGIC
23 representatives that the haircut is inappropriate?

24 A. I did not, no.

25 Q. Did you tell your team to find out what in the world is

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1 this forty percent haircut?

2 A. We had a discussion about what the forty percent haircut
3 meant on the page. And -- and we understood it as much as we
4 needed to understand it. Our focus was on the 253 and not how
5 they got to the 253, though.

6 Q. But you understand they got to the 253 by applying a forty
7 percent haircut. You understand that much, right?

8 A. I understand that they got to the 250 -- the page gets to
9 253, including the forty percent haircut, right.

10 Q. Yes. And you and Duff & Phelps did not review the
11 analysis behind the forty percent reduction in payments,
12 correct?

13 A. As I said, our focus was to --

14 THE COURT: Can you answer his question.

15 A. We didn't review the details behind how they got to forty
16 percent, no.

17 Q. Not just detail. You didn't rely -- you didn't analyze
18 anything behind the forty percent. Isn't that correct?

19 A. Both what you said in both your questions just now is
20 correct. We did not analyze the forty percent; it wasn't
21 important to us; it was irrelevant to us. And we certainly did
22 not rely on it.

23 Q. I didn't ask whether you relied on it. I asked whether
24 you analyzed --

25 THE COURT: Ask your next question.

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1 Q. Did you --

2 THE COURT: Ask your next question.

3 MR. BAIIO: Yes, Your Honor.

4 Q. Did you, on behalf --

5 MR. BAIIO: Strike that.

6 Q. You were reviewing this settlement proposal from the
7 perspective of the FGIC trusts, right?

8 A. Yes.

9 Q. From that perspective, did you think that you should find
10 out what the forty percent reduction was all about?

11 A. No. Our focus was to assess the reasonableness of the 253
12 and the entire proposal.

13 Q. The forty percent haircut appears nowhere in any of the
14 FGIC rehabilitation plan documents. Isn't that correct?

15 A. I wouldn't expect it to. It does not. No.

16 Q. Okay. And did you direct your people to say when they
17 were discussing this item with Lazard and FGIC, that since the
18 forty percent factor doesn't appear in the rehabilitation plan,
19 how can it be fair and equitable here? Did you ask them to
20 inquire about that?

21 A. We had a discussion, as I mentioned, and we came to a full
22 understanding as to what the discount means, and we got
23 comfortable with the 253 and the fact that there should be a
24 discount. And because your question has some assumptions that
25 are inaccurate, I want to make sure you understand that the --

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1 there's no reason for the forty percent to be in the plan. The
2 plan was focused on the policyholders -- all of FGIC's
3 policyholders. As far as this number, it represents, to be
4 very clear --

5 MR. BAIIO: Your Honor, may I ask for the --

6 THE COURT: No.

7 MR. BAIIO: -- just an answer.

8 THE COURT: Let him finish his answer.

9 A. What it represents is the fact that the ResCap thirty-
10 seven or forty-seven, including the nonsettlement trusts, these
11 FGIC insured ResCap sponsored trusts have cash flows. The
12 timing of those cash flows are very different from the timing
13 of the cash flows of the other FGIC policyholders. They are
14 front loaded. Their claims are, for the most part -- a lot of
15 them already existed and were unpaid -- accrued and unpaid.
16 The remainder of those claims, a great majority of them were in
17 the next few years, which is unlike the other claims that are
18 going to flow to the FGIC trusts that are coming over the next
19 thirty or forty years, and therefore you'd expect a different
20 present value factor for the FGIC policyholders at large from
21 the ResCap sponsored FGIC policyholders.

22 It's apples and oranges. There's -- and I described it in
23 my report. But to continue to ask as if we didn't understand
24 it -- the forty percent, is wholly inaccurate. We didn't need
25 to know the exact nature of the forty and why it's forty as

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1 opposed to thirty-eight or forty-two. But we got comfortable
2 that it made a lot of sense that there would be a discount for
3 our claims from a present value factor relative to the other --
4 the other FGIC policyholders.

5 Q. Done?

6 A. I'm done. I'm happy to go back to it if you need to
7 understand it.

8 Q. Well, did anybody say what about thirty percent, when you
9 were dealing with FGIC saying shouldn't the amount be thirty or
10 twenty or ten, so that the amount that the payment would be,
11 would be more for the trustees, not less?

12 A. No. Like I said, our focus was not on that number, but
13 rather on what resulted, the 253 plus the 18 million of waived
14 premiums. It was not on the forty percent.

15 Q. And you didn't view your job or D&P's job to negotiate
16 with FGIC over the amount of the payment. Isn't that correct?

17 A. Our job was to assess the reasonableness of the 253 plus
18 the other benefits of the commutation.

19 Q. And your job didn't include to come back to them and say
20 the forty percent has problems, the forty percent, as a
21 negotiating matter, should be lower or it shouldn't be there at
22 all. That was not your job?

23 A. Our job was to --

24 THE COURT: Do you want to answer his question?

25 A. My job was not to negotiate the forty percent. My job was

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1 to -- if I thought the 253 was too low, or if I thought that
2 any of the inputs that related to the forty percent or the 253
3 were inaccurate or wrong, then I might have pushed and asked
4 more about it. We felt, objectively and clearly, that the 253
5 was reasonable, and therefore whatever they -- FGIC used to get
6 to the 253 was less important to me.

7 Q. The factors that you identified, the fact that most of the
8 claims had already occurred, that they were going to be
9 occurring in the first few years, in fact, sir, those lead to a
10 lower discount than a higher discount. Isn't that correct? If
11 they're already claims that have occurred and they're going to
12 occur in the near future, to add a forty percent haircut is
13 illogical. Do you agree or disagree?

14 A. I don't agree. But I -- apparently you misunderstood what
15 I said before. So I could certainly explain it for your
16 benefit or for the benefit of the judge again, if you'd like.

17 Q. I'm not asking for another explanation.

18 THE COURT: Your counsel can ask if he wishes.

19 Go ahead, Mr. Baio.

20 Q. Could you look at, in your book, what's identified as
21 Exhibit BZ?

22 A. Okay.

23 Q. Exhibit BZ is the first settlement proposal that you and
24 people at Duff & Phelps received concerning the proposal by
25 FGIC. Isn't that correct?

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1 A. Yes.

2 Q. You received it sometime in late March. It says at the
3 bottom March 26, 2013. Correct?

4 A. We received it in late March. I don't know if we received
5 it on March 26th, but we received it in late March.

6 Q. And in fact, except for when you get to the bottom of the
7 page where it talks about percent of allowed claim realized,
8 the numbers that appear there that you had received in March of
9 2013, are the same, at least with respect to what was included
10 in the chart, as appears in page 5 of Exhibit 123?

11 A. That's correct.

12 Q. Okay. So there were no changes between March and the
13 analysis that you did?

14 A. No, page 5 is not the analysis that we did. Page 5 was
15 meant to replicate this exact page. So I wouldn't expect any
16 changes.

17 Q. And they never changed that amount? That is, FGIC never
18 made a different proposal. It was one proposal, and you
19 analyzed one proposal. Correct?

20 A. The presentation on May 13th, May 15th, was with respect
21 to this proposal. And my testimony is with regard to this
22 proposal. Any other proposals or discussions about other
23 numbers are mediation confidential.

24 Q. But I'm not asking about anything having to do with the
25 mediation. Isn't it true that you only analyzed one proposal

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1 from FGIC?

2 A. And I said that in the context of the presentation and in
3 the context of my expert report, we're only analyzing one
4 proposal. There may have been discussions during mediation
5 about potential different numbers.

6 Q. I'm not asking about mediation at all. Let me draw your
7 attention to page -- to your own deposition transcript. Page
8 17, I asked the following question: "Did you do any analysis
9 on any settlement offer made by FGIC other than the one that
10 appears in the May 15th presentation?

11 "A. I don't believe so."

12 Do you see that?

13 A. That's correct. We did not do any other analysis of any
14 of this.

15 Q. So that's accurate?

16 A. That's accurate.

17 Q. There's no analysis on anything else no matter where it
18 came from?

19 A. That's correct.

20 Q. Okay. It's also true, is it not, sir, that in your
21 analysis, you did not include any amounts that FGIC may receive
22 as a result of claims that it has brought for reps and
23 warranties against other parties? You did not include any
24 potential recoveries in evaluating how much money FGIC will
25 have available to pay policyholders. Correct?

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1 A. I heard two different questions there. So you'd have to
2 separate those questions so I could answer it accurately.

3 Q. You did not include in your analysis any recoveries that
4 FGIC may receive in connection with rep and warranty claims
5 that it has brought against others, isn't that correct?

6 A. Others, you mean non-ResCap?

7 Q. ResCap or non-ResCap.

8 A. I think we considered the 215 or roughly 200 million
9 dollars that FGIC would receive as part of the ResCap
10 settlement.

11 Q. And that money would not go to the settling policyholders,
12 correct?

13 A. Under the terms of the commutation, the number -- the
14 money does not go to the policyholders.

15 Q. Right. And in fact, in that -- the first proposal that
16 you received from FGIC, if you go back and look at it, BZ, FGIC
17 itself identified a net that it was planning to pay; isn't that
18 correct?

19 A. Can you refer to me the exact page you're looking at?

20 Q. Yes. Do you have BZ in front of you? It's a single-page
21 document.

22 A. I do.

23 Q. Okay. And at the bottom they identify a net that they are
24 prepared to pay; isn't that correct?

25 A. That's correct.

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1 Q. All right. Have you seen an affidavit or declaration that
2 was prepared by Alice Chong in this matter?

3 A. I have.

4 Q. Can you look at the last document in your binder? And I
5 think --

6 MR. BAIO: Do we have an exhibit number?

7 UNIDENTIFIED SPEAKER: GV.

8 MR. BAIO: GZ, Your Honor.

9 UNIDENTIFIED SPEAKER: GV in my binder, V.

10 MR. BAIO: GV.

11 UNIDENTIFIED SPEAKER: GV.

12 MR. BAIO: Is it GV?

13 THE COURT: It's GV in my binder.

14 MR. BAIO: Then, by God, it's GV.

15 Q. You've seen this before, correct?

16 A. Yes.

17 Q. Did you play any role in the preparation of it?

18 A. No.

19 Q. Is it your understanding -- you've read it before, though,
20 is that correct?

21 A. I've -- I've read it, yes.

22 Q. And do you believe it's accurate?

23 A. Yes.

24 Q. And you understand that your counsel produced to us, last
25 week, a hard drive that had 113 gigabytes of information; do

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1 you know that?

2 A. My understanding, it was not last week; it was the week
3 before last.

4 Q. Okay. It was on August 8th, the week before last,
5 correct. You understand that that was delivered at that time,
6 is that correct?

7 A. I don't know the exact date, but my understanding is the
8 week before last.

9 Q. And if you look at the chart that appears on the last page
10 of Ms. Chong's declaration, you'll see that the hard drive file
11 is identified at the bottom left; do you see that?

12 A. I do.

13 Q. And that there is a series of arrows that go up, leading
14 up to your expert report where recoveries to policy holders was
15 identified as between 217 and 340 million dollars; do you see
16 that?

17 A. I do.

18 Q. And that chart accurately reflects the flow of information
19 up to the recovery to policyholders, correct?

20 A. The chart is accurate, yes.

21 MR. BAIIO: Your Honor, I offer this declaration and
22 the chart into evidence?

23 THE COURT: Any objections?

24 MR. WEITNAUER: No objections.

25 THE COURT: All right. Exhibit GV, which includes

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1 Exhibit A to it, is admitted into evidence.

2 (Alice Chong declaration was hereby marked for identification
3 as Opposing Parties' Exhibit GV, as of this date.)

4 Q. Okay. Sir, have you served as an expert in other matters?

5 A. I have.

6 Q. Was one of those matters the Celebrity Cruise case?

7 A. Yes, we discussed it at my deposition.

8 Q. Yes. And in that case the Court rejected analysis, isn't
9 that correct?

10 A. I don't know the exact terminology, but I was not -- I did
11 not -- I did not serve as an expert in the case, due to the
12 fact that the judge precluded certain experts, including me,
13 from testifying.

14 Q. And the judge found that, "Your analysis suffers from the
15 same fatal flaws as another expert's methodology, reliance on
16 projections that were not borne out in reality." Correct?

17 A. I'd have to see the language that you're looking at there.

18 Q. Can you look behind Exhibit CA? There is the reported
19 decision, and tell me if that refreshes your recollection. I
20 think it's CA.

21 A. Okay. I'm here.

22 Q. And I was quoting from page 14.

23 A. Okay.

24 Q. It's the second full paragraph on the left hand side. And
25 you'll see that it refers, if you look at the earlier page, to

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1 Allen Pfeiffer. "This analysis suffers from the same fatal
2 flaw as Dr. Lasater's methodology, reliance on projections
3 that were not borne out in reality. This defect drives the
4 entire calculation and is not repaired by identifying a lower
5 bound, using a methodology, which standing alone, might be more
6 reliable." Do you see that?

7 A. I do.

8 Q. And does that refresh your recollection as to the judge's
9 ruling with respect to analysis?

10 A. Yes.

11 Q. Now, in this case, sir --

12 THE COURT: This case, meaning which, Celebrity
13 Cruises or ResCap?

14 Q. I'm sorry; our case. In our case, did you make
15 evaluations of anticipated losses from January of 2013 for the
16 rest of the year, in evaluating whether the settlement was
17 appropriate or reasonable?

18 A. I'm sorry, my head was in Celebrity Cruises, and then you
19 switched to this case.

20 Q. Okay.

21 A. Ask the question again, please.

22 Q. Cleanse your palate, for a minute, on Celebrity Cruises;
23 now we'll talk about this case. Did you make estimates of what
24 the claims would be, by the various policyholders in the FGIC-
25 wrapped trusts, for the period 2013?

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1 A. We made estimates for every year, yes.

2 Q. Okay. But 2013, in particular, you had used actual
3 results that appeared as of the end of 2012, and then you
4 estimated 2013 and forward, is that correct?

5 A. Yes.

6 Q. And what did you estimate for 2013, at the time that you
7 prepared your report and presented it to the trustees?

8 A. I don't recall what we estimated for that year in
9 particular.

10 Q. And have you checked to determine whether in fact the
11 losses that you projected for the entire year have already
12 occurred in the first six or seven months of this year?

13 A. We have. Yes, we have actually gone back and recalculated
14 the estimated claim amounts as of the end of July, and made
15 sure to provide that updated accurate assessment, on a trust-
16 by-trust basis, as part of our allocation. And we reconfirmed
17 that our estimated future claim amount for the FGIC-wrapped
18 trusts is consistent, as of end of July -- is consistent to
19 what we estimated at the end of December 2012.

20 Q. Except it's coming in higher, correct?

21 A. No, like I just said, we estimated the range, and I think
22 that the low case for the claims came in slightly higher, but
23 the high case came in slightly lower. And so, in total, the
24 mid-point was, you know, within a few million dollars of the
25 1.25, 1.3 mid-point range.

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1 Q. But if you don't use the low case, and just use a base
2 case, the claims are coming in higher, isn't that correct?

3 A. No, you're confusing the terminology. The base case
4 represents FGIC and Lazard's estimation for the -- for the
5 rehab plan. We did not provide a base case in our stress case;
6 we, instead, provided a low scenario and a high scenario for
7 claims on the FGIC-wrapped, ResCap-sponsored trusts. And it is
8 that estimate that we updated, and for that we have a low, we
9 have a high, we have a mid-point. And the analysis that we
10 have done, as of the end of July, comes up with a claim
11 estimate that's consistent with what we did as of end of
12 December and it's also consistent with FGIC's estimate for
13 claims and Holtzer's affidavit. So when you say "base case", I
14 think you're confusing --

15 Q. I wasn't confusing it; I meant low and high.

16 THE COURT: Let him finish --

17 Q. Okay. I used the wrong phrase.

18 THE COURT: -- the answer.

19 MR. BAIO: Sorry, Your Honor.

20 THE COURT: Let him finish --

21 MR. BAIO: Yes, sir.

22 THE COURT: -- his answer.

23 MR. BAIO: Okay.

24 THE COURT: Let him finish. Mr. Pfeiffer?

25 A. I'm finished. I'm just saying that base case is very

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1 different than a low and a high; it's a very different -- base
2 case was provided by FGIC; we did a low and a high --

3 Q. I understand that.

4 A. -- of our claims.

5 Q. The low case, in your evaluation, is one where there are
6 low claims. That's because the economy is better, things are
7 going better, et cetera, et cetera. That's the assumption
8 under a low case, that there will be low claims, correct?

9 A. The low case assumes the economy is better than in the
10 high case or in the mid case, yes.

11 Q. And yet you still use -- and I just want a yes or no, if
12 you can -- you still use as high as a twenty percent discount
13 rate in that scenario; is that correct?

14 A. No, you're mischaracterizing what we did.

15 Q. All right.

16 MR. BAIIO: I have no further questions. I pass the
17 witness.

18 THE COURT: Further cross? Hold on, Mr. Weitnauer.

19 UNIDENTIFIED SPEAKER: Can you give us one minute,
20 Your Honor?

21 THE COURT: Sure.

22 (Pause)

23 UNIDENTIFIED SPEAKER: No further cross, Your Honor.

24 THE COURT: All right. Mr. Weitnauer?

25 MR. WEITNAUER: Kit Weitnauer, Your Honor, again.

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1 CROSS-EXAMINATION

2 BY MR. WEITNAUER:

3 Q. I want to go back to the last couple of questions that
4 counsel was asking you. And the discount rate you applied to
5 the low case, the high case, I was a little confused on base
6 cases versus the high and low scenario. Do you discuss the
7 application of discount rates in your direct testimony at
8 paragraph 81 to the low and the high scenario?

9 A. Yes, we do.

10 Q. All right. I won't waste the Court's time. That's what I
11 wanted to be clear was --

12 THE COURT: Paragraph 81?

13 MR. WEITNAUER: Paragraph 81, Your Honor, relates to
14 the last couple of questions.

15 THE COURT: Okay.

16 MR. WEITNAUER: Thank you.

17 THE COURT: All right. You're excused -- Mr. --

18 MR. KERR: No, no.

19 THE COURT: Mr. Kerr, are you --

20 MR. KERR: No, no.

21 THE COURT: You're excused, Mr. Pfeiffer. Thank you
22 very much.

23 THE WITNESS: Thank you.

24 MR. WYNNE: If I could just have one moment, Your
25 Honor?

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1 THE COURT: Go ahead, sure.

2 MR. WYNNE: Good morning, Your Honor. Richard Wynne,
3 on behalf of FGIC. Your Honor, we just have, I think, a time
4 management or procedure question --

5 THE COURT: Sure.

6 MR. WYNNE: -- for Your Honor. Your Honor, we have a
7 couple of short rebuttal questions that we would call -- we
8 normally would do that at the end of their case, because we
9 anticipate possible other rebuttal questions for some things
10 that were raised on cross and in their openings. And we've
11 reserved time, while the settling parties have agreed to that,
12 but I just wanted to raise it, Your Honor, because this is, I
13 believe, our last witness for the case-in-chief.

14 THE COURT: You've got -- you know, you've got six
15 hours on your side.

16 MR. WYNNE: Okay. Your Honor --

17 THE COURT: You'll have time --

18 MR. WYNNE: -- then we'll just save --

19 THE COURT: -- for rebuttal.

20 MR. WYNNE: I didn't want to put peo -- we didn't want
21 to put people up and down, so we'll do it at the end.

22 THE COURT: That's fine.

23 MR. WYNNE: Thank you, Your Honor.

24 THE COURT: Okay. Do the proponents rest, Mr. Kerr?

25 MR. KERR: Your Honor, Charles Kerr of Morrison &

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1 Foerster on behalf of the debtors.

2 The only one item is that there is still these
3 designations and cross-designations. Besides that --

4 THE COURT: Subject to the designations and cross-
5 designations --

6 MR. KERR: And I -- we apparently have some exhibits,
7 Your Honor.

8 THE COURT: Well, if you can offer -- anybody's who's
9 going to -- for the proponents, if you're going to offer
10 exhibits, do it now.

11 MR. KERR: Yes.

12 THE COURT: Because what I -- other than the
13 designations and cross-designations, which I understood are
14 going to get done --

15 MR. KERR: I understand, Your Honor.

16 THE COURT: -- I expect you to wrap --

17 MR. KERR: If you just give me a moment --

18 THE COURT: Fine.

19 MR. KERR: -- I'll confer.

20 THE COURT: Okay.

21 (Pause)

22 MR. KERR: One second, Your Honor. I think they're
23 just getting a document.

24 THE COURT: Take all the time you want; I'm counting
25 it against your side.

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1 MR. KERR: I know that, Your Honor. Despite that,
2 we're not going to take all the time we want.

3 THE COURT: Yeah.

4 MR. SIDMAN: Your Honor, Howard Sidman again, for
5 FGIC. We have three documents we want to introduce into
6 evidence at this time. One is Exhibit 174; it is the second
7 quarter of 2013 quarterly statement of FGIC. It was referred
8 to on Mr. Dubel's redirect, I believe, Your Honor. Exhibit
9 174.

10 THE COURT: Any objections?

11 MR. BAIIO: We're checking, Your Honor.

12 UNIDENTIFIED SPEAKER: No objection, Your Honor.

13 THE COURT: All right. Exhibit 174 is in evidence.
14 (FGIC statement for second quarter of 2013 was hereby received
15 into evidence as Debtors' Exhibit 174, as of this date.)

16 MR. SIDMAN: A second exhibit I want to move in at
17 this time is Exhibit 312, which is a listing of news stories
18 regarding the mediator appointment and/or the mediation. And
19 it's a list of about, I would say, ten news stories. It was
20 annexed to my declaration that we submitted in connection with
21 the reply in this matter, Your Honor, and it's 312.

22 THE COURT: For what purpose are you offering it?

23 MR. SIDMAN: Just for notice, not for the truth of the
24 matter asserted, Your Honor.

25 THE COURT: Any objections?

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1 (Pause)

2 MR. BAIIO: Your Honor, we just don't understand what
3 the purpose is of providing this as evidence. They are
4 articles.

5 MR. SIDMAN: Well, we can provide --

6 MR. BAIIO: So we object.

7 THE COURT: What's the purpose, Mr. Sidman?

8 MR. SIDMAN: The purpose is, is to understand the fact
9 that this mediation was -- people -- that the references to the
10 mediation were publicly available, and people knew that it was
11 happening.

12 THE COURT: Can I see a copy of Exhibit 312 --

13 MR. SIDMAN: Of course, Your Honor.

14 THE COURT: -- rather than searching for it up here.

15 MR. SIDMAN: There's --

16 THE COURT: All right. Thank you.

17 Mr. Baio, your objection?

18 MR. SIDMAN: We could --

19 THE COURT: Just --

20 MR. BAIIO: My objection is that this should be offered
21 and admitted for no purpose whatsoever; it's just articles.

22 THE COURT: No, it's a list of articles; it's not even
23 the articles.

24 MR. BAIIO: It's not even the articles.

25 MR. SIDMAN: Well, but we can --

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1 THE COURT: He's offering it for notice that there
2 were articles published.

3 MR. BAIIO: I don't see relevance or probative value of
4 this list or anything.

5 THE COURT: Well, I --

6 MR. BAIIO: So we object.

7 THE COURT: I mean, what I've understood so far in the
8 case is that your clients contend that -- well, I don't know
9 what -- I mean, they obviously had -- they obviously knew there
10 was a mediation going on. I mean, that -- you don't dispute
11 that.

12 MR. BAIIO: I don't think that's the issue, Your Honor.

13 THE COURT: Right.

14 MR. BAIIO: You don't need this. There are public
15 filings that accomplish that. These articles are --

16 THE COURT: Right. Objection to 312 is sustained.

17 MR. SIDMAN: Okay. Well, Your Honor, speaking of
18 public filings, the next Exhibit 313 is a listing of public
19 filings. It's the same point, Your Honor.

20 THE COURT: You're offering it for notice?

21 MR. SIDMAN: For notice; that's it, Your Honor. We're
22 happy to move in the underling documents.

23 THE COURT: No, I don't want to --

24 MR. SIDMAN: I didn't think software.

25 THE COURT: Stop. Mr. Baio?

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1 MR. BAIIO: If it's for that purpose, Your Honor, no
2 objection.

3 THE COURT: All right. Exhibit 313 is in evidence.
4 (Listing of public filings was hereby received into evidence as
5 Debtors' Exhibit 313, as of this date.)

6 THE COURT: Anything else, Mr. Sidman?

7 MR. SIDMAN: No thank you, Your Honor.

8 THE COURT: Mr. Kerr, do the proponents rest, subject
9 to the designations and cross-designations?

10 MR. KERR: Your Honor, Charles, Kerr, Morrison &
11 Foerster. The proponents rest, subject to the cross-
12 designations.

13 THE COURT: All right. Who, on the objectors, is
14 beginning?

15 MR. BAIIO: Your Honor, Joseph Baio, on behalf of the
16 investors. We call K. Austen McQuillen to the stand.

17 THE COURT: Thank you. Mr. McQuillen, if you would
18 raise your right hand and be sworn?

19 (Witness sworn)

20 THE COURT: Please have a seat.

21 Mr. Baio?

22 DIRECT EXAMINATION

23 BY MR. BAIIO:

24 Q. Sir, you have before you a declaration, executed and filed
25 on July 31st, 2013.

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1 And after you pour the water. Do you need a little more?

2 A. I do.

3 Q. Okay.

4 THE COURT: Let's find out whether he's going to be up
5 there for a while before you --

6 MR. BAIIO: True.

7 Q. And did you execute this declaration, on or about the date
8 it bears?

9 A. I'm trying --

10 Q. It should be right there --

11 THE COURT: In the folder.

12 Q. -- Mr. McQuillen, in the folder.

13 A. Yes.

14 MR. BAIIO: Your Honor, we offer this is Mr.
15 McQuillen's affirmative testimony, direct testimony.

16 THE COURT: Any objections?

17 MR. KERR: No objection, Your Honor.

18 THE COURT: All right. Mr. McQuillen's declaration,
19 which is ECF 4425, is admitted into evidence.

20 (Mr. McQuillen's declaration, ECF 4425, was hereby received
21 into evidence, as of this date.)

22 Cross-examination?

23 MR. KERR: No cross-examination, Your Honor.

24 THE COURT: Anyone else?

25 You're excused.

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1 Next witness?

2 Do we have a witness?

3 MR. GELFARB: Good morning, Your Honor. David
4 Gelfarb, on behalf of objector Freddie Mac.

5 Freddie Mac calls Ms. Gina Healy to the stand.

6 THE COURT: Okay. Ms. Healy, why don't you come on
7 up? Go ahead up to the witness stand. Raise your right hand.

8 (Witness sworn)

9 THE COURT: Please have a seat.

10 MR. GELFARB: Your Honor, David Gelfarb, again, on
11 behalf of objector Freddie Mac.

12 Your Honor, Freddie Mac offers Ms. Healy's declaration
13 as her direct testimony in this matter.

14 THE COURT: All right. Let me -- hang on. All right.
15 What I have in front of me is the declaration of Gina Healy in
16 support of, et cetera, which is dated July 31, 2013.

17 Mr. Kerr?

18 MR. KERR: Yeah, no objection.

19 THE COURT: All right. It's in evidence.
20 (Ms. Gina Healy's declaration was hereby received into
21 evidence, as of this date.)

22 MR. GELFARB: And Your Honor, just so that we may have
23 a moment or two to clarify things with exhibits, if it's okay
24 with Your Honor to proceed with cross-examination and we'll
25 move the exhibits in when cross is finished?

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1 UNIDENTIFIED SPEAKER: I don't care.

2 THE COURT: Okay.

3 MR. KERR: Your Honor, that's fine.

4 THE COURT: That's fine.

5 MR. GELFARB: Thank you, Your Honor.

6 THE COURT: Cross-examination?

7 MR. BENNETT: Your Honor, we do have a binder -- it's
8 Steven Bennett from Jones Day for FGIC. We have a cross-
9 binder.

10 THE COURT: Okay. Come on up.

11 Thank you, Mr. Sidman.

12 UNIDENTIFIED SPEAKER: And one for Mr. Gelfarb?

13 THE COURT: I'm going to be lost here soon.

14 UNIDENTIFIED SPEAKER: Can we get one for Mr. Gelfarb,
15 please? Thank you.

16 THE COURT: Just to be clear, with the Healy
17 declaration, it should be filed on ECF. Okay? I don't see
18 it -- if it has, I don't see it, at least on the copy that's in
19 the binder. I want all of the -- all of the testimony, either
20 in the transcript or in the declarations. So it either has to
21 be marked as an exhibit or put on ECF. It actually should be
22 put on ECF.

23 UNIDENTIFIED SPEAKER: Your Honor, we have filed it on
24 ECF in redacted form.

25 THE COURT: Okay.

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1 UNIDENTIFIED SPEAKER: In the binder --

2 THE COURT: Okay. Well, do you know what the number
3 is, by any chance?

4 UNIDENTIFIED SPEAKER: I have all that --

5 MR. BENNETT: I think the ECF number is 4691.

6 THE COURT: 4691. Thank you. Okay.

7 MR. BENNETT: That's actually the first tab in the
8 cross-binder, Your Honor.

9 THE COURT: Great. I see. Thank you.

10 MR. BENNETT: May I proceed?

11 THE COURT: Please do. Tell me your name again; I'm
12 sorry.

13 MR. BENNETT: Steven Bennett --

14 THE COURT: Okay.

15 MR. BENNETT: -- with Jones Day --

16 THE COURT: Okay.

17 MR. BENNETT: -- for FGIC.

18 THE COURT: Go ahead with cross. Fine.

19 MR. BENNETT: May I proceed?

20 THE COURT: Yes.

21 MR. BENNETT: Okay.

22 CROSS-EXAMINATION

23 BY MR. BENNETT:

24 Q. Ms. Healy, you're the vice president of credit risk
25 management at Freddie Mac, correct?

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1 A. Correct, yes.

2 Q. And you're responsible for negotiating credit workouts and
3 restructurings, correct?

4 A. Correct.

5 Q. And Freddie has had claims unpaid from FGIC since about
6 2009; is that right?

7 A. Yes.

8 Q. And those are significant claims, in your view, correct?

9 A. Yes.

10 Q. And the current face amount of those claims is about 522
11 million dollars, is that right?

12 A. The outstanding UPB, correct?

13 Q. And the claim that Freddie has against FGIC was important
14 enough that Freddie hired counsel, in 2010, to assist in
15 enforcing that claim, correct?

16 A. Can you explain your question? You're talking about their
17 steering committee that was established --

18 Q. Right, yeah --

19 A. -- is that what you're referring to?

20 Q. Freddie Mac hired McKool Smith in 2010, correct?

21 A. Yes.

22 Q. And that was for purposes of enforcing, potentially, its
23 claim, in connection with any FGIC restructuring, correct?

24 A. Yes.

25 Q. And Freddie Mac also has in-house counsel, correct?

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1 A. Yes.

2 Q. And Freddie Mac's in-house counsel have been involved in
3 claims against FGIC, correct?

4 A. Yes. Again, it was -- the goal was to have a global
5 restructuring for the rehabilitation plan that sort of pays out
6 the claims in a policyholder -- like a pre-packaged bankruptcy
7 solution.

8 Q. Okay. And that was the steering committee that negotiated
9 with FGIC, is that right?

10 A. Yes.

11 Q. And Freddie Mac joined that steering committee in 2010, is
12 that right?

13 A. That is correct.

14 Q. And Freddie Mac was a key participant in the steering
15 committee, correct?

16 A. Yes.

17 Q. And the steering committee was, itself, separately,
18 represented by the law firm of Bingham McCutchen, correct?

19 A. Yes.

20 MR. GELFARB: Objection.

21 THE COURT: Overruled.

22 Q. That was in addition to McKool Smith, correct?

23 A. McKool Smith represented Freddie Mac, so in terms of our
24 direct dealings and our counsel, it was McKool Smith
25 representing our interest in the case.

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1 Q. Okay. So the Bingham representation was for the whole
2 steering committee, correct?

3 A. At --

4 MR. GELFARB: Objection.

5 THE COURT: Overruled.

6 Q. And there was also a financial advisor for the whole
7 steering committee, correct?

8 A. Yes.

9 Q. That was Rothschild, correct?

10 A. Yes.

11 Q. And the steering committee, as far as you know, continued
12 to have communications as late as April of 2013, correct?

13 A. Only with respect to questions that we raised. As we were
14 getting near the approving the rehabilitation plan, there were
15 certain concerns and questions we had about offsets, that in
16 terms of what the policyholders would ultimately, you know,
17 receive under the proposed payouts, there was some potential
18 cash offsets. So we needed to make sure we understood how that
19 structure worked, and we had some conversations with John
20 Dubel, as well as some of the trustees around that.

21 Q. All right. So that's the steering committee having
22 communications about the FGIC rehabilitation, as late as April
23 of 2013, correct?

24 A. Again, only with respect to that aspect.

25 Q. Okay.

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1 A. That's all that we were -- with questions we had raised
2 that were materially changing ours, we asked what other issues
3 there were. At the time, to our knowledge, the only thing that
4 was sort of presenting an issue was the right of offsets.

5 Q. Okay. You were aware of the filing of the ResCap
6 bankruptcy, correct?

7 A. Yes, I was.

8 Q. And preservation of Freddie Mac's claims within the ResCap
9 bankruptcy was important, correct?

10 A. Yeah, we had a number of claims in the ResCap
11 bankruptcies. I worked on, for example, the transfer of the
12 mortgage servicing rights from ResCap to Ocwen for the thirty
13 billion dollar underlying our mortgages. And we -- so the
14 elements that I was responsible for, yes, we worked on those.

15 Q. Okay. So the Ocwen transaction, in particular, was an
16 important part of the ResCap bankruptcy that you paid attention
17 to, correct?

18 A. Yes.

19 Q. And McKool Smith also advised Freddie Mac with respect to
20 the ResCap bankruptcy, is that right?

21 MR. GELFARB: Objection.

22 THE COURT: Sustained.

23 A. Yes, that's correct.

24 THE COURT: I sustained the objection.

25 THE WITNESS: I'm sorry, oh, okay. Okay.

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1 Q. Well, you did have counsel in connection with the ResCap
2 bankruptcy --

3 THE COURT: Ask your next question. Let's go.

4 MR. BENNETT: That's the question.

5 THE COURT: Come on, ask --

6 MR. BENNETT: I'm not asking about specifics of
7 advice, Your Honor.

8 THE COURT: She already said she had counsel. Let's
9 go.

10 MR. BENNETT: Okay.

11 Q. And if you could go to, please, tab 10 in your binder,
12 please.

13 A. Okay.

14 Q. And that's Exhibit 204, you see that?

15 A. Yes.

16 Q. And that's a "Notice of appearance and demand for service
17 of papers" that was filed on behalf of Freddie Mac, correct?

18 A. Yes.

19 Q. And if you go to the second page there, on Exhibit 204,
20 there's a listing of the individuals who are supposed to
21 receive notice; you see that?

22 A. Yes.

23 Q. And that included folks at McKool Smith, and in the
24 associate general counsel's office at Freddie Mac, correct?

25 A. Okay.

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1 Q. And what they asked for was copies of all the pleadings,
2 documents, and notices in connection with the case, correct?

3 A. I haven't seen this before, but okay, yes, I see that.
4 That's what it says.

5 MR. BENNETT: Your Honor, we'll offer Exhibit 204.

6 THE COURT: Any objection?

7 MR. GELFARB: Objection, Your Honor. It's a court
8 filing. It should just be admitted as a court document, court
9 exhibit.

10 THE COURT: No, he's offered it. Do you have an
11 objection to the exhibit?

12 MR. GELFARB: I do, Your Honor.

13 THE COURT: What's the objection?

14 MR. GELFARB: It's simply a court exhibit. I mean --

15 THE COURT: Overruled. In evidence.

16 (List of individuals who are supposed to receive notice was
17 hereby received into evidence as Debtors' Exhibit 204, as of
18 this date.)

19 Q. And you did expect McKool Smith to monitor developments in
20 the ResCap bankruptcy, correct?

21 MR. GELFARB: Objection.

22 THE COURT: You can answer that yes or no.

23 A. Yes, the parts that we --

24 THE COURT: Just --

25 A. -- were --

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1 THE COURT: Just answer it --

2 A. Yes.

3 THE COURT: -- yes or no, if you can.

4 A. Okay. Yes.

5 Q. You've heard of a lawyer named Kathy Patrick?

6 A. I have heard of her, yes.

7 Q. And Kathy Patrick has represented Freddie in connection
8 with some private-label securities cases, correct?

9 MR. GELFARB: Objection.

10 THE COURT: Overruled.

11 A. That -- yes, that's my understanding. But again, that's
12 not something that I directly worked on. There are other
13 members that may have better knowledge of that.

14 Q. And to your knowledge, nobody at Freddie Mac reached out
15 to Kathy Patrick for representation in the ResCap case,
16 correct?

17 MR. GELFARB: Objection.

18 THE COURT: Sustained.

19 Q. To your knowledge, Freddie Mac never attempted to join the
20 Kathy Patrick noteholder group, correct?

21 MR. GELFARB: Objection.

22 THE COURT: Overruled.

23 A. I don't know the answer. I don't know.

24 Q. And you're aware of the existence of an unsecured
25 creditors' committee in the ResCap bankruptcy, correct?

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1 A. Yes.

2 Q. And you know that there was some contact between
3 representatives of Freddie Mac and the unsecured creditors'
4 committee in connection with the ResCap bankruptcy, correct?

5 A. Yes. So again, the element that we were sort of working
6 through, in terms of transferring the mortgage assets, we had
7 some calls with the unsecured creditors' committee in
8 addressing the concerns around our proof of claim.

9 Q. And --

10 A. So that's how I know the dealings with them.

11 Q. And you never directed anyone to reach out to the
12 unsecured creditors' committee to discuss other ongoing
13 developments in the bankruptcy, correct?

14 MR. GELFARB: Objection, Your Honor, just to the
15 extent I -- my only objection is to the extent it implicates
16 any form of legal representation.

17 THE COURT: It didn't call for any.

18 Did you instruct anybody to reach out to the
19 creditors' committee?

20 THE WITNESS: I did not, no.

21 Q. And you claim that you were personally not aware of the
22 mediation in the ResCap bankruptcy; is that right?

23 A. I was not.

24 Q. And you don't know whether there were other individuals at
25 Freddie Mac who were aware of the mediation, correct?

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1 A. To my knowledge, based on the colleagues I've talked to,
2 no -- nobody I knew was involved in any of the mediation
3 discussions.

4 THE COURT: That wasn't the question.

5 THE WITNESS: It wasn't?

6 THE COURT: Can you ask your question --

7 A. Can you repeat your question?

8 Q. Sure. You don't know whether there were other individuals
9 at Freddie Mac who were aware of the mediation, correct?

10 A. I don't know.

11 Q. And you're familiar with something called a Federal
12 Housing Finance Agency; is that right?

13 A. Yes.

14 Q. That was the agency that placed Freddie Mac into
15 conservatorship, is that correct?

16 A. Um-hum.

17 MR. GELFARB: Objection, Your Honor.

18 THE COURT: Overruled.

19 MR. GELFARB: I believe it was an act of Congress that
20 would do that.

21 MR. BENNETT: It's in her declaration, Your Honor.

22 THE WITNESS: Yes.

23 Q. Okay. Could you go to Exhibit 310 -- it's at tab 9 --
24 please?

25 A. Okay.

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1 Q. And you'll see there an affirmation of Christopher P.
2 Johnson in the state court proceeding. Do you see that?

3 A. Yes.

4 Q. And you know that Mr. Johnson is affiliated with the
5 Federal Housing Finance Agency?

6 MR. GELFARB: Objection, Your Honor. That's not what
7 the affirmation of Mr. Johnson says at all.

8 THE COURT: Sustained.

9 MR. BENNETT: Well, he says that he's counsel of
10 record for the Federal Housing Finance Agency.

11 THE COURT: Well, that wasn't what you asked.

12 MR. BENNETT: Do you see that in paragraph 1?

13 THE COURT: That wasn't what you asked.

14 MR. BENNETT: Okay. That's fine.

15 Q. Do you see that in paragraph 1 of his statement?

16 A. Yes.

17 Q. Okay. And you do know that, according to Mr. Johnson's
18 statement, he attended various sessions of the mediation,
19 correct?

20 MR. GELFARB: Objection, Your Honor.

21 THE COURT: Well, the affirmation is not in evidence.

22 MR. BENNETT: We'll offer it, Your Honor.

23 THE COURT: Any objection?

24 MR. GELFARB: No objection, Your Honor.

25 THE COURT: All right. In evidence.

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1 (Affirmation of Christopher P. Johnson was hereby received into
2 evidence as Debtors' Exhibit 310, as of this date.)

3 THE COURT: All right. Now ask your question again.

4 MR. BENNETT: Right.

5 Q. So you do know that, according to Mr. Johnson, he attended
6 several of the court-ordered mediation sessions, correct?

7 A. I was not aware of that, but I guess I'm reading it now,
8 to kind of see what his statement says.

9 Q. Okay. You know that FGIC set up a Web site regarding the
10 rehabilitation proceedings, correct?

11 A. Yes.

12 Q. And you understood that the rehabilitation Web site
13 provided information to all policyholders, informing them of
14 key developments, correct?

15 A. All policyholders that were not involved as part of the
16 steering committee, right? So the parties that were not
17 participants directly to the terms and conditions of the
18 steering committee, our understanding was it was going to be
19 set up as a mechanism to communicate the plan, the
20 rehabilitation plan to all policyholders. But it was always
21 our expectation that any significant changes to the plan would
22 be consulted with the members of the steering committee,
23 including Freddie Mac.

24 Q. Well, take a look at tab 4, please. It's Exhibit 206. To
25 your knowledge, that's a printout from the FGIC Web site with

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1 regard to the rehabilitation proceeding, correct?

2 A. Okay.

3 MR. BENNETT: And we'll offer 206, Your Honor.

4 MR. GELFARB: It's hearsay, Your Honor.

5 THE COURT: Sustained.

6 MR. BENNETT: It's not for any truth; it's for --

7 THE COURT: What are you offering it for?

8 MR. BENNETT: Only offering it for the fact that there
9 was a Web site that listed information and it was publicly
10 available.

11 MR. GELFARB: We have no authentication of the
12 contents of the Web site.

13 MR. BENNETT: She just did.

14 THE COURT: She did. All right. Objection's
15 overruled. It's in evidence.

16 (Printout from the FGIC Web site with regard to the
17 rehabilitation proceeding was hereby received into evidence as
18 Debtors' Exhibit 206, as of this date.)

19 Q. And you know that that was a public Web site, correct?

20 A. Okay.

21 THE COURT: Well, do you -- you have to be clear.

22 A. I have not gone into the Web site. If that's your
23 question, I have not gone into it. I know, again, as I
24 mentioned, there was indication that there was a Web site that
25 was going to be set up. I personally have not -- because

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1 again, our expectation is, it was the conversations we've had
2 as part of the steering committee to discuss any of the
3 contents and substantive changes to the plan. That's it.

4 Q. Okay. Part of the negotiation with the steering
5 committee -- between the steering committee and Freddie Mac
6 concerned discussions of commutation of policies, correct?

7 A. Can you repeat your question again?

8 Q. Yeah. Part of the negotiation between the steering
9 committee and FGIC --

10 A. Uh-huh.

11 Q. -- concerned discussion of commutation of policies.

12 A. Only to the extent of CDS and some of the reinsurance
13 commutations.

14 Q. And you did know that, as part of the rehabilitation plan,
15 there would be settlements to commute certain FGIC exposures,
16 correct?

17 MR. GELFARB: Objection.

18 THE COURT: Overruled.

19 A. It was never contemplated, to my knowledge, any of the
20 RMBS securities, those policies would be commuted. So again,
21 it was just the CDS, in terms of to get some -- given the
22 pri -- we were not clear about the priority of those payments,
23 that we wanted to make sure that those commutations, which John
24 Dubel had discussed some of the key economic terms and how that
25 was going to be approached, and it was on a pari passu basis

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1 with the payments to be made for the RMBS security holders.

2 Q. Could you take a look at tab 11, please? That is Exhibit
3 209.

4 A. Okay.

5 Q. These are copies of some orders from the rehabilitation
6 proceedings confirming commutation deals, correct?

7 A. Yes.

8 MR. GELFARB: Objection, Your Honor. It's asking her
9 to -- she's not an attorney. She's not here as an attorney.
10 She's not here to interpret, Judge --

11 THE COURT: Sustained.

12 Q. Well, you know that these were documents that were filed
13 in connection with the rehabilitation proceeding, correct?

14 THE COURT: Do you -- have you seen these before?

15 Q. You saw them at your deposition, didn't you?

16 A. Yeah, we -- I saw them for the deposition for the first
17 time. But I do know in general that they were, you know, some
18 commutations, again, related to CDS and some of the reinsurance
19 transactions that was being contemplated. And as to the course
20 of since the steering committee met, as they were being
21 executed, we were getting information on that.

22 MR. BENNETT: Okay. We'll offer 209, Your Honor.

23 THE COURT: All right. In evidence.

24 (Commutations related to CDS were hereby received into evidence
25 as Debtors' Exhibit 209, as of this date.)

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1 Q. And one of the commutation orders that you're aware of
2 involved an entity called Aardvark (ph.) Funding, correct?

3 A. Where are you? I'm sorry.

4 Q. If you go to Exhibit 209 at page 9 --

5 A. Okay.

6 Q. -- right in the middle there --

7 A. Yeah.

8 Q. -- it references Aardvark Funding. You see that?

9 A. Okay. Yes.

10 Q. And that was a commutation deal that took place in late
11 2012, correct?

12 MR. GELFARB: Objection, Your Honor.

13 THE COURT: Well, she can answer the question. I
14 mean, do you know whether there was a commutation with
15 Aardvark?

16 A. I was aware of just CDS commutations in general. I can
17 not recall the specific Aardvark. But I think I -- it might
18 ring a bell. So, yeah.

19 Q. Well, could you go to tab 2, please? It's your
20 deposition, Exhibit FJ at page 127.

21 A. Okay.

22 Q. You were under oath at that time, correct?

23 A. Yes, as I am right now.

24 Q. Okay. And were you asked these questions and did you give
25 this answer?

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1 "Q. Just with regard to Radian (ph.) and Aardvark, sometime in
2 the December 2012, January 2013 time frame, Freddie Mac was
3 aware of those commutation agreements, correct?"

4 There's an objection, and then your answer, "Yes."

5 A. Yeah.

6 Q. And that's true testimony, correct?

7 A. Yeah.

8 Q. Okay. And --

9 A. Again, I look at many settlements --

10 THE COURT: You've answered the question.

11 A. -- and settlements. So --

12 THE COURT: Go ahead.

13 THE WITNESS: Sorry.

14 THE COURT: Ask your next --

15 MR. BENNETT: Yes.

16 THE COURT: -- question.

17 Q. The Aardvark deal actually did involve a conduit
18 arrangement for an RMBS transaction. Isn't that true?

19 MR. GELFARB: Object to the form.

20 THE COURT: He's doing cross-examination. The form is
21 entirely proper.

22 Do you know the answer to his question?

23 A. I do not know. No, I don't -- I was not aware of that.
24 My understanding was it was another CDS type of commutation.

25 Q. Okay. Could you look at Exhibit 318, please?

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1 THE COURT: Where do I find that?

2 THE WITNESS: Where is that?

3 MR. BENNETT: It's tab 12, Your Honor.

4 THE COURT: Thank you.

5 Q. This one, you'll see, is an e-mail from Dana Kaufman at
6 Weil Gotshal to John Briody at McKool Smith and Peter Goodman
7 at McKool Smith and others, November 7, 2012, concerning
8 Aardvark. You see that?

9 A. Yes.

10 Q. And to the best of your knowledge, that's an e-mail that
11 actually was sent to your counsel about the termination
12 agreement, correct?

13 MR. GELFARB: Objection.

14 THE COURT: Sustained unless you're going to establish
15 a foundation for this.

16 Have you seen this e-mail before?

17 THE WITNESS: I have not, no.

18 THE COURT: Sustained.

19 MR. BENNETT: Well, I think it's self authenticating,
20 Your Honor. So we'll for offer Exhibit --

21 THE COURT: It isn't to me.

22 MR. BENNETT: Say again?

23 THE COURT: It isn't self authenticating to me.

24 MR. BENNETT: Okay.

25 Q. Well, try 317 at tab 13, please. You'll see that one's an

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1 e-mail from Dana Kaufman to Peter Goodman and John Briody,
2 among others, at McKool Smith, June 18, 2013. To the best of
3 your knowledge, that's an e-mail that was sent to your
4 counsel --

5 MR. GELFARB: Objection --

6 Q. -- correct?

7 MR. GELFARB: Your Honor.

8 THE COURT: Do you know what --

9 THE WITNESS: I'm -- again. I'm not a party to this
10 e-mail, so --

11 THE COURT: Have you seen it before?

12 THE WITNESS: I have not seen it before.

13 THE COURT: Sustained.

14 MR. BENNETT: Okay. If we need to, I guess, we'll put
15 that in --

16 THE COURT: Well, I'm --

17 MR. BENNETT: -- on rebuttal.

18 THE COURT: What you do is up to you, but the
19 objection is sustained.

20 MR. BENNETT: Thank you, Your Honor. No further
21 questions.

22 THE COURT: All right. Further cross?

23 MR. DINE: Yes, Your Honor.

24 THE COURT: You're a new player. You are --

25 MR. DINE: I am a new player, Your Honor. Jeffrey

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1 Dine, Seward and Kissel for U.S. Bank as indenture trustee.

2 THE COURT: Okay.

3 CROSS-EXAMINATION

4 BY MR. DINE:

5 Q. Ms. Healy, in your direct testimony at paragraph 15 --
6 that's tab 1 of your binder.

7 A. What page is that?

8 Q. Paragraph 15.

9 THE COURT: Page 6.

10 THE WITNESS: Oh. Thank you.

11 Q. You say that FGIC's most recent financial --

12 THE COURT: Let her get there. Let her get there --

13 THE WITNESS: Thank you.

14 THE COURT: -- okay?

15 MR. GELFARB: Where are we, Mr. Dine?

16 MR. DINE: Paragraph 15 of the direct.

17 MR. GELFARB: And what exhibit is that?

18 THE COURT: It's the first thing in your binder --

19 MR. GELFARB: Sorry.

20 THE COURT: -- Mr. Gelfarb.

21 THE WITNESS: Oh. I'm sorry, page 6. Okay. Hang on.

22 THE COURT: We'll wait until --

23 THE WITNESS: Okay.

24 THE COURT: -- everybody gets -- you got it?

25 THE WITNESS: Yes.

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1 THE COURT: Go ahead. All right.

2 THE WITNESS: Yeah.

3 THE COURT: Go ahead, Mr. Dine.

4 MR. DINE: Thank you.

5 Q. So in looking at paragraph 15 of your direct testimony,
6 you say in there that -- in the second sentence, "FGIC's most
7 recent financial disclosures in the rehabilitation proceeding,
8 project that policyholders will receive present-value
9 recoveries on FGIC policy claims in the amount of twenty-seven
10 to thirty cents on the dollar." Is that correct?

11 A. Yes.

12 Q. And the disclosure you were referring to, twenty-seven to
13 thirty cents on the dollar, was an estimate, not a certainty,
14 correct?

15 A. Well, it was based on an expected loss, and --

16 THE COURT: Could --

17 A. -- again --

18 THE COURT: Could you answer the --

19 A. -- we expected a case --

20 THE COURT: Could you just answer the question? If
21 your counsel --

22 Q. It was --

23 THE COURT: -- wants.

24 Q. -- an estimate, not a certainty, correct?

25 A. Yes.

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1 Q. Thank you. And so if we turn to paragraph 16 in your
2 direct testimony--

3 A. Um-hum.

4 Q. -- where you say, "It is Freddie Mac's understanding that
5 under the rehabilitation plan Freddie Mac is to receive a
6 present-value recovery of twenty-seven to thirty cents on the
7 dollar," you don't really mean that it's certain that Freddie
8 Mac will receive that amount?

9 A. As a business person, I'm talking about high probability
10 of recovery. And given that that was the -- when you look at
11 the economic conditions, first of all, the whole overall plan
12 was based upon what is -- you know, seeking --

13 Q. That's not really --

14 A. -- the advantage --

15 Q. -- my question.

16 A. -- of long date and short dated of --

17 THE COURT: Let her finish her answer.

18 A. -- policyholders. And so really, at twenty-seven to
19 thirty cents, that was designed over -- what is it -- over
20 twelve or eighteen months ago. If you look at since, if
21 anything, the economic recovery has --

22 THE COURT: Okay, let's --

23 A. -- significantly improved. So --

24 THE COURT: You've answered the question.

25 A. This is my expectation of --

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1 THE COURT: Stop.

2 THE WITNESS: Okay.

3 THE COURT: Ask your next question.

4 Q. It was an estimate, not a certainty.

5 THE COURT: Can you answer that a yes or no?

6 A. It was -- yes.

7 Q. And in fact, in paragraph 18, you say that it was your
8 understanding from the Miller affidavit that FGIC policyholders
9 would very likely recover twenty-seven to thirty cents on the
10 dollar. Is that correct?

11 A. Yes.

12 Q. And the Miller affidavit does not itself say "very
13 likely," does it?

14 A. Again, that's my probability of recovery.

15 Q. But not Mr. Miller's?

16 A. Okay.

17 Q. All right. So Ms. Healy, there is no settlement number
18 below twenty-eight cents on the dollar that Freddie Mac would
19 consider to be in the best interests of the trusts and the
20 holders.

21 MR. BENNETT: Objection.

22 THE COURT: Overruled.

23 A. Sorry. Can you repeat the question again?

24 Q. There is no settlement number below twenty-eight cents on
25 the dollar that Freddie Mac would consider to be in the best

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1 interests of the trusts and the holders. Is that correct?

2 A. At this point we were not asked to even to even opine on
3 that.

4 THE COURT: Could you answer the question that's been
5 asked?

6 A. Yes, that's correct.

7 Q. Is --

8 A. Because I've got an obligation as a -- to the tax payers,
9 so -- and again, if you look at Miller's --

10 THE COURT: Stop.

11 THE WITNESS: Oh. Okay.

12 THE COURT: Okay. Your counsel can -- if he wants to
13 draw out your --

14 THE WITNESS: Okay.

15 THE COURT: -- testimony --

16 THE WITNESS: Okay.

17 THE COURT: -- on redirect, he can do that. So let's
18 just try and confine yourself to the questions Mr. Dine's
19 asking.

20 THE WITNESS: Okay.

21 THE COURT: All right. Go ahead. Ask the next
22 question.

23 Q. So just to be clear, there is no number below twenty-eight
24 cents?

25 A. Right now, we want to entitle -- no. We want to entitle

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1 to what the policy holders and going to benefiting under the
2 plan.

3 MR. DINE: Thank you.

4 THE COURT: All right. Any other cross-examination?
5 Redirect?

6 REDIRECT EXAMINATION

7 BY MR. GELFARB:

8 Q. Ms. Healy, you had discussions with John Dubel in
9 connection with the steering committee, correct?

10 A. Yes.

11 MR. BENNETT: Objection, Your Honor; beyond the scope.

12 THE COURT: I don't know. Overruled.

13 Q. Did Mr. Dubel ever discuss the subject of commutation of
14 the RMBS policies?

15 A. No, he did not.

16 Q. I believe Mr. Bennett showed you Exhibit 204. That should
17 be in your binder. That was the notice of appearance. Do you
18 recall that?

19 A. What tab was that on?

20 Q. I believe that's following tab number 10.

21 A. Okay.

22 Q. Do you recall Mr. Bennett showed you that a few moments
23 ago?

24 A. Yes.

25 Q. Do you have any understanding of whether that -- the

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1 filing of that document entitled you to receive information as
2 to what was going on in the ResCap mediation?

3 MR. BENNETT: Objection, Your Honor.

4 THE COURT: Overruled.

5 A. No.

6 Q. Did you have reason to believe that you were already at
7 the negotiating table during the months that the mediation was
8 going on?

9 THE COURT: I don't understand --

10 MR. BENNETT: Objection.

11 THE COURT: -- the question. Ask another question.

12 Q. Was it Freddie Mac's understanding throughout the course
13 of the discussions leading to the enactment of the FGIC
14 rehabilitation plan that Freddie Mac was occupying a seat at
15 the negotiating table?

16 A. Yes. Over the past three years we'd been working on
17 active negotiations with FGIC as part of the steering
18 committee. So again, any material changes, we were expected to
19 be part of the negotiating table.

20 Q. Approximately how much in claims has Freddie Mac asserted
21 in connection with this matter, if you know?

22 A. Our holdings, again, are 500 million. And we have at
23 least, I would say, over a 100 million in losses at this
24 point -- our expectation.

25 Q. And can you briefly tell --

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1 THE COURT: Did you also have a cure claim? I just --
2 I'm not sure. Did Freddie Mac also --

3 THE WITNESS: With the ResCap?

4 THE COURT: Yes.

5 THE WITNESS: Yes, we did.

6 THE COURT: Yeah. You're not talking about the cure
7 claims. You're talking about something different.

8 THE WITNESS: You're talking about with ResCap FGIC?

9 MR. GELFARB: ResCap, Your Honor. Yes --

10 THE WITNESS: FGIC?

11 MR. GELFARB: -- for ResCap.

12 THE WITNESS: FGIC-wrapped securities?

13 MR. GELFARB: Yes.

14 THE WITNESS: Is that what you're --

15 MR. GELFARB: Yes.

16 THE WITNESS: -- talking about? Yeah.

17 Q. And what is the amount of the holdings of Freddie Mac in
18 FGIC-wrapped securities that are covered within the ResCap
19 bankruptcy?

20 A. It's approximately 500 million.

21 MR. GELFARB: Okay. No further redirect. We would
22 like to enter some exhibits unless there's, of course, further
23 recross, or any recross.

24 THE COURT: Well, whether or not there's -- do wish to
25 offer -- if you're going to offer exhibits, go ahead and offer

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1 your exhibits.

2 MR. GELFARB: All right. We would like to enter, Your
3 Honor, Exhibit W, Exhibit GX --

4 THE COURT: GX or X?

5 MR. GELFARB: GX, I believe, Your Honor.

6 THE COURT: Okay.

7 MR. GELFARB: That's the --

8 THE COURT: Yeah, there's a -- go ahead.

9 MR. GELFARB: Thank you, Your Honor.

10 THE COURT: I just want to get the list right.

11 MR. GELFARB: Yes, Your Honor. That's why I'm trying
12 to go as slowly as I can. Exhibit 205, Exhibit 208, Exhibit
13 209, Exhibit 212, Exhibit 216, and that's it, Your Honor.

14 THE COURT: All right. Just let me make sure. What I
15 wrote down is W, GX, 205, 208, 209, 212, and 216. Do I have
16 that list right?

17 MR. GELFARB: That sounds right to us --

18 THE COURT: Mr. Bennett?

19 MR. GELFARB: Your Honor. Just one more time to
20 reiterate --

21 THE COURT: No, we don't have to do it one more time
22 if I read it correctly. All right.

23 MR. GELFARB: Yes, that's --

24 THE COURT: Any objections?

25 MR. GELFARB: -- correct, Your Honor.

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1 MR. KERR: One second, Your Honor.

2 THE COURT: Yes.

3 MR. KERR: We're just trying to --

4 (Pause)

5 MR. KERR: Your Honor, we object to Exhibits W, GX,
6 and 216 on hearsay grounds. W is an affidavit by Ms. Healy.

7 THE COURT: Let me look at it.

8 (Pause)

9 THE COURT: The objection to W is overruled. She's
10 here. You can cross-examine further, if you wish. With
11 respect to GX, what's the objection?

12 MR. KERR: Hearsay, Your Honor. It's just -- it's
13 their legal brief on an objection.

14 THE COURT: Well, it's kind of like what you've been
15 putting --

16 MR. KERR: Well, I guess I'd just like to know the
17 purpose --

18 THE COURT: -- what Mr. Bennett put --

19 MR. KERR: -- of its going in then.

20 THE COURT: What's the purpose of GX?

21 MR. GELFARB: The purpose of GX, Your Honor, is that
22 in case there's any contention that she was unable to answer
23 questions, or that she didn't answer questions fully enough, we
24 want it on the record that we did object to the 30(b)(6)
25 notice. And that's why want it in.

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1 MR. KERR: I'll object to that.

2 THE COURT: Sustained. What about 216?

3 MR. KERR: Again, Your Honor, this seems to be an
4 objection filed by Freddie Mac in the rehabilitation. I'm not
5 sure what the purpose of that is.

6 THE COURT: What do you -- what's the purpose of the
7 argument?

8 MR. GELFARB: The purpose, Your Honor, is that -- for
9 example, with respect to Mr. Bennett's questions implying or at
10 least we were to infer --

11 THE COURT: Just tell me the basis for the purpose.

12 MR. GELFARB: The basis is to show a continuous course
13 of objection to the commutation proposals; that we objected in
14 state court, we objected in this court --

15 THE COURT: It's overruled. The objection is
16 overruled.

17 MR. GELFARB: Thank you, Your Honor.

18 THE COURT: So W and 216 are admitted.

19 (Affidavit by Ms. Healy was hereby received into evidence as
20 Opposing Parties' Exhibit W, as of this date.)

21 (Objection filed by Freddie Mac in the rehabilitation was
22 hereby received into evidence as Debtors' Exhibit 216, as of
23 this date.)

24 (Various Documents were hereby received into evidence as
25 Debtors' Exhibits 205, 208, 209, 212, as of this date).

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1 THE COURT: Further cross-examination?

2 MR. KERR: No, Your Honor.

3 THE COURT: Anybody else?

4 MR. BENNETT: No, Your Honor.

5 THE COURT: All right. You're excused. Thank you
6 very much Ms. Healy.

7 All right. We're going to take our recess. It's
8 10:47. We'll take a ten-minute recess.

9 MR. BENNETT: Thank you, Your Honor.

10 THE COURT: And have your next witness ready to go.

11 MR. BAIIO: Thank you, Your Honor.

12 (Recess from 10:47 a.m. until 10:59 a.m.)

13 THE COURT: Please be seated. Court is back in
14 session. Mr. Baio, your next witness. Ms. Eaton.

15 MS. EATON: Good morning, Your Honor. Mary Eaton,
16 Willkie Farr & Gallagher, on behalf of Monarch, Bayview, and
17 CQS. We'd like to call Adam Sklar.

18 THE COURT: Okay. Mr. Sklar. If you would raise your
19 right hand and be sworn.

20 (Witness sworn)

21 THE COURT: All right. Please have a seat.

22 MS. EATON: Your Honor, Mr. Sklar submitted a
23 declaration on July 31st that is filed as docket number 4427
24 that we'd like to move into evidence.

25 THE COURT: Any objection?

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1 MR. ESPANA: No objection, Your Honor.

2 THE COURT: All right. The Sklar declaration is in
3 evidence.

4 (Sklar declaration was hereby received into evidence as
5 Opposing Parties' Exhibit, as of this date.)

6 MR. ESPANA: Mauricio Espana of Dechert, on behalf of
7 the Bank of New York Mellon. May I inquire?

8 THE COURT: Please go ahead.

9 MR. ESPANA: Good morning, Mr. Sklar.

10 THE WITNESS: Good morning.

11 MR. ESPANA: There are just a few exhibits. I'll pass
12 them around.

13 THE COURT: Thank you.

14 CROSS-EXAMINATION

15 BY MR. ESPANA:

16 Q. So Mr. Sklar, according to the declaration that you've
17 submitted in this case, you are a managing principal at
18 Monarch, and co-portfolio manager of its structured credit
19 funds, correct?

20 A. Correct.

21 Q. Okay. And your current responsibilities in those
22 positions include researching corporate credits, structured
23 credit investments, trading certain investments, and making
24 select portfolio management decisions, correct?

25 A. Correct.

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1 Q. And you're not appearing today as an expert witness,
2 correct?

3 A. That's my understanding.

4 Q. And you have never been qualified to testify as an expert
5 witness, correct?

6 A. That's correct.

7 Q. And Mr. Sklar, Monarch engaged counsel in connection with
8 the ResCap bankruptcy in proceeding around October, 2012,
9 correct?

10 A. At some point post the filing in 2012. That's correct. I
11 don't recall if it was October specifically, but --

12 Q. Do you recall whether it was latter part of 2012?

13 A. Again, I don't recall specifically. You know, end of the
14 summer, early fall feels about right.

15 Q. Okay. And Monarch's counsel corresponded with certain of
16 the trustees on behalf of Monarch, on or about the time of
17 October, 2012, or November, correct?

18 A. That's my recollection.

19 Q. And Monarch did not issue a direction to any of the
20 trustees in connection with the ResCap bankruptcy proceeding,
21 correct?

22 A. That's correct.

23 Q. And Monarch did not make a request to the trustees that it
24 be permitted to participate in the mediation, correct?

25 A. That characterization, I believe, is not correct.

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1 Q. Did Monarch ever contact any of the trustees and seek to
2 participate in the mediation?

3 A. The reason why I am hesitating is because through counsel,
4 it's my understanding that we did reach out to various parties
5 and request attendance in the mediation.

6 Q. Are you aware whether your counsel ever contacted the
7 trustees to seek to participate in mediation?

8 A. My understanding is that the trustees were not the party
9 that decided who or who not would participate in the mediation,
10 so I'm not sure that it would be completely relevant to ask the
11 trustee's --

12 THE COURT: Do you know?

13 A. -- permission.

14 THE COURT: All right. Mr. Sklar, listen to the
15 question, and just answer that question, okay?

16 Ask your question again.

17 THE WITNESS: Can you --

18 Q. Are you aware whether or not Monarch or -- sorry,
19 Monarch's counsel ever contacted the trustees to seek to
20 participate in the mediation?

21 A. We contacted the trustees numerous times on various
22 points. I'm not sure whether or not it was specifically to ask
23 to participate in the mediation.

24 Q. So you're not aware of whether or not they ever contacted
25 the trustees to seek to participate in the mediation.

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1 A. Again --

2 Q. Yes, or no.

3 THE COURT: Can you answer that, yes or no?

4 A. I'm not specifically aware of that point.

5 MR. ESPANA: Nothing further, Your Honor.

6 THE COURT: All right. Any further cross-examination?

7 MR. KERR: No, Your Honor.

8 THE COURT: All right. Redirect?

9 REDIRECT EXAMINATION

10 BY MS. EATON:

11 Q. Mr. Sklar, did --

12 THE COURT: Just identify yourself, for the record.

13 MS. EATON: I beg your pardon, Your Honor. Mary
14 Eaton, again, Willkie Farr on behalf of --

15 THE COURT: Go ahead.

16 MS. EATON: -- Monarch, CQS, and Bayview.

17 Q. Mr. Sklar, did -- to your knowledge, did Monarch ever
18 request information from the trustees regarding the bankruptcy,
19 prior to the time the mediator in this case was appointed?

20 A. We did.

21 Q. If you would turn -- I handed a binder momentarily, and
22 I'm going to ask you to turn to the tab marked DR.

23 A. I'm there.

24 Q. Have you seen -- do you recognize Exhibit DR, Mr. Sklar?

25 A. I do.

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1 Q. And can you tell us what it is?

2 A. It is a letter from Willkie Farr & Gallagher to Bill Munno
3 at Seward & Kissel as counsel for U.S. Bank, who is a trustee
4 on the RAMP 2005-EFC7 trust.

5 Q. And did you see Exhibit DR on or about the time that it
6 was sent to Mr. Munno?

7 A. I did.

8 Q. Do you know any of the circumstances surrounding the
9 sending of this letter that's marked as Exhibit DR to counsel
10 for U.S. Bank?

11 MR. ESPANA: Your Honor, objection; scope.

12 THE COURT: Sustained.

13 Q. Mr. -- well --

14 MS. EATON: I'd like to move Exhibit DR into evidence.

15 MR. KERR: Objection, Your Honor. I'm not sure the
16 purpose of its going into evidence. I would object on just
17 hearsay grounds.

18 THE COURT: What's the purpose, Ms. Eaton?

19 MS. EATON: So that the fact that a request for
20 information was sent by counsel from Monarch to counsel for the
21 trustee before the mediation.

22 MR. KERR: I'm not going to object that this letter --
23 the fact the letter was sent, Your Honor.

24 THE COURT: It's essentially, notice is what you're
25 saying --

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1 MR. KERR: Right.

2 MS. EATON: Yes.

3 THE COURT: -- Ms. Eaton. Is it?

4 MS. EATON: Yes.

5 THE COURT: Any other --

6 MR. KOTWICK: Objection; foundation --

7 THE COURT: -- objection?

8 MR. KOTWICK: Objection --

9 THE COURT: I'm sorry. Go ahead.

10 MR. KOTWICK: Mark Kotwick on behalf of U.S. Bank, of
11 Seward & Kissel. Lack of foundation; it's hearsay. He's
12 neither a --

13 THE COURT: It's not being offered for --

14 MR. KOTWICK: -- an author or a recipient.

15 THE COURT: Wait, wait. Stop. It's not being offered
16 for hearsay purpose. You say you have a foundation objection?

17 MR. KOTWICK: He's neither the author nor the
18 recipient.

19 THE COURT: Well, he doesn't have to be the author.
20 He said he saw at or about the time it was sent. Do we have to
21 drag Mr. Munno in here to find out whether he received a copy
22 of this?

23 MR. KOTWICK: No, we don't.

24 THE COURT: Okay. Objection is overruled. Exhibit DR
25 is in evidence for notice.

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1 (Letter from Willkie Farr & Gallagher to Mr. Munno was hereby
2 received into evidence as Opposing Parties' Exhibit DR, as of
3 this date.)

4 BY MS. EATON:

5 Q. If you could turn, Mr. Sklar, to the tab in your binder
6 marked GE. Do you have that document?

7 A. I do.

8 Q. And do you recognize Exhibit GE?

9 A. I do. I was copied on the e-mail chain.

10 Q. Can you tell us what it is?

11 A. It is an e-mail between Willkie and Seward & Kissel
12 regarding the receipt of the letter previously referenced, I
13 believe, in tab DR.

14 Q. And did you see this document, Exhibit GE, at or about the
15 time that it was sent?

16 A. Again, I was copied on the e-mail, so it appears I did.

17 Q. Did Monarch ever speak to Mr. Munno about requesting
18 information regarding the bankruptcy --

19 MR. ESPANA: Objection --

20 Q. -- before the --

21 MR. ESPANA: -- Your Honor; scope.

22 THE COURT: Sustained. Well, let's let her finish.

23 I'm sorry, Ms. Eaton. I'm going to withdraw that ruling. Ask
24 your full question, and then will see if there's an objection.
25 Don't interrupt in the middle of a question.

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1 MR. ESPANA: I apologize, Your Honor.

2 THE COURT: Go ahead, Ms. Eaton.

3 Q. Before the mediator was appointed in this bankruptcy, Mr.
4 Sklar, you testified that Monarch either had asked -- made
5 requests of the trustees for information regarding the
6 bankruptcy, correct?

7 A. Yes.

8 Q. Do you remember what subjects of information Monarch was
9 requesting information about?

10 MR. ESPANA: Objection, Your Honor --

11 A. I do.

12 MR. ESPANA: -- scope.

13 THE COURT: You can answer that, yes or no.

14 A. I do recall.

15 Q. And what were those subjects?

16 MR. ESPANA: Same objection.

17 THE COURT: Sustained. This is beyond the scope of
18 the last examination.

19 MS. EATON: The objectors move Exhibit GE into
20 evidence.

21 THE COURT: Mr. Kerr?

22 MR. KERR: Again, Your Honor, I would just -- we
23 object on hearsay grounds. I'm not sure the purpose.

24 THE COURT: What's the purpose of the offer, Ms.
25 Eaton?

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1 MS. EATON: It's the same as the last exhibit,

2 THE COURT: Well --

3 MS. EATON: -- Your Honor.

4 THE COURT: -- then let's --

5 MS. EATON: Notice.

6 THE COURT: -- so we have a clear record.

7 MS. EATON: Notice --

8 THE COURT: What's the purpose --

9 MS. EATON: -- and a response --

10 THE COURT: -- of the offer?

11 MS. EATON: I beg your pardon?

12 THE COURT: What is the purpose of the offer of this
13 exhibit? Don't tell me the same as the last exhibit.

14 MS. EATON: Simply, notice purposes. It's a response
15 to the last exhibit.

16 THE COURT: Mr. Kerr?

17 MR. KERR: For that limited purpose, I have no
18 objection, Your Honor.

19 THE COURT: All right. It's in evidence for that
20 purpose.

21 (E-mail between Willkie Farr & Gallagher and Seward & Kissel
22 was hereby received into evidence as Opposing Parties' Exhibit
23 GE, as of this date.)

24 BY MS. EATON:

25 Q. If you could turn to Exhibit DS. Do you have that

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1 document, Mr. Sklar?

2 A. Yes.

3 Q. And have you seen this document before?

4 A. I have.

5 Q. And can you tell us what it is?

6 A. It is a letter, again, from our counsel, Willkie Farr &
7 Gallagher to Seward & Kissel in their capacity as repres -- as
8 counsel to U.S. Bank.

9 Q. And did you receive Exhibit DS on or about the time that
10 it was sent by your counsel to Mr. Munno?

11 A. Yes.

12 MS. EATON: The objectors move Exhibit DS into
13 evidence.

14 THE COURT: For what purpose?

15 MS. EATON: Notice, sir.

16 MR. KERR: Your Honor, we object to this. I don't
17 think -- this is not -- I'm not sure what she means by notice.
18 This is not a request for information as far as I can read it.
19 And would object on hearsay grounds.

20 THE COURT: Sustained.

21 Q. Now, Mr. Sklar, during your cross-examination, you were
22 asked whether you were an expert. Do you recall that?

23 A. I do.

24 Q. Even though you're not an expert, do you ever perform --

25 THE COURT: He was asked if he's testifying as an

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1 expert, and he said no.

2 Q. Even though you've never testified as an expert, Mr.
3 Sklar, have you ever performed any financial analysis with
4 respect to the recoveries Monarch expects to receive pursuant
5 to the FGIC rehabilitation plan?

6 MR. ESPANA: Objection. Scope.

7 THE COURT: You can answer that yes or no.

8 A. Yes.

9 Q. And when did you start performing that -- those analyses?

10 MR. ESPANA: Same objection.

11 THE COURT: Sustained. It's beyond the scope.

12 MS. EATON: No further questions.

13 THE COURT: Thank you very much.

14 Any further examination?

15 MR. ESPANA: Nothing, Your Honor.

16 THE COURT: All right. You're excused, Mr. Sklar.

17 Thank you very much for your testimony.

18 All right. Next witness. Ms. Eaton, somebody,
19 calling a next witness? Mr. Baio, are you calling a witness?

20 MR. BAIIO: I'm sorry, Your Honor. It's their turn. I
21 apologize.

22 THE COURT: I don't care whose turn it is I just want
23 to know --

24 MR. BAIIO: We are not --

25 THE COURT: Okay.

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1 MR. BAIO: -- at this point.

2 THE COURT: Okay. Mr. Carney, are you calling a
3 witness?

4 MR. CARNEY: Yes, Your Honor. We'd like to call Scott
5 Gibson to the stand.

6 THE COURT: Mr. Gibson, come on up and be sworn.
7 Raise your right hand.

8 (Witness sworn)

9 THE COURT: Please have a seat.

10 THE WITNESS: Thank you.

11 THE COURT: Mr. Carney.

12 MR. CARNEY: Good morning, Your Honor. Michael Carney
13 from McKool Smith for Freddie Mac.

14 As I mentioned before, we're calling Scott Gibson, our
15 expert witness, to the stand and Mr. Gibson submitted his
16 declaration on July 31st originally and it was refiled in
17 unredacted format pursuant to Your Honor's request.

18 If I may have a moment, Your Honor?

19 THE COURT: Yes. Go ahead.

20 (Pause)

21 THE COURT: If what you're looking for is the ECF
22 docket number you can tell me later. Let's

23 UNIDENTIFIED SPEAKER: I have it. It's 4693.

24 MR. CARNEY: It's 4693 but unfortunately it looks as
25 if a previous version of the declaration was included in the

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1 binder.

2 THE COURT: Okay. Which one do you want me to take
3 out of the binder? Is it ER?

4 MR. CARNEY: The -- yes. That is an exhibit to his
5 deposition but the actual docket number 4693 is what should
6 have been in the -- at first. That's his actual direct.

7 THE COURT: I'm confused. What's in the beginning of
8 your binder is or is not the right testimony?

9 MR. CARNEY: It is not. That is a previous
10 declaration submitted on July 19th --

11 THE COURT: Okay.

12 MR. CARNEY: -- which is an exhibit to his deposition,
13 I believe.

14 UNIDENTIFIED SPEAKER: Are you sure about that because
15 my ER is the 19th. I can hand it up. Your Honor, it's yours.

16 MR. CARNEY: This is the July 31.

17 UNIDENTIFIED SPEAKER: Based on yours.

18 MR. CARNEY: Actually, I think that's my mistake, Your
19 Honor. It is July 31 is the correct one, I'm sorry.

20 THE COURT: And that is ECF 4693?

21 MR. CARNEY: Yes, it is.

22 THE COURT: Okay.

23 MR. CARNEY: All right. Thank you.

24 THE COURT: You're offering it in evidence?

25 MR. CARNEY: Yes, we're offering it in evidence.

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1 THE COURT: Okay.

2 (Scott Gibson declaration was hereby received into evidence as
3 Opposing Parties' Exhibit, as of this date.)

4 THE COURT: Okay. Are you offering any exhibits at
5 this time or not?

6 MR. CARNEY: Yes, we are, Your Honor.

7 THE COURT: Could you tell me which ones?

8 MR. CARNEY: We are offering Exhibits 212, which is
9 the Holtzer affirmation; I believe it may have already been
10 admitted. Exhibit 123 which I also believe has been admitted
11 so -- and Exhibit 125, the Miller affidavit.

12 THE COURT: So are 212 and 123 in evidence?

13 MR. KERR: 212 is already in, I believe, Your Honor.

14 THE COURT: What about 123?

15 UNIDENTIFIED SPEAKER: 123 is already in.

16 THE COURT: Okay. So they're offering 125. Any
17 objection?

18 MR. KERR: No objection.

19 THE COURT: All right. Exhibit 125 is in evidence.
20 (Miller affidavit was hereby received into evidence as Debtors'
21 Exhibit 125, as of this date.)

22 MR. CARNEY: Thank you, Your Honor.

23 THE COURT: All right. Cross-examination.

24 MR. BENNETT: Just hand the binders up. Make sure
25 those guys get a copy.

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1 THE COURT: Thank you.

2 MR. BENNETT: Steven Bennett from Jones Day for FGIC,
3 Your Honor.

4 CROSS-EXAMINATION

5 BY MR. BENNETT:

6 Q. Mr. Gibson, you're a financial professional specializing
7 in RMBS and ABS modeling. Correct?

8 A. That's correct.

9 Q. And that kind of work involves a blend of market and
10 credit research, internal and external pricing models and
11 specialist judgment to determine and verify the correct set of
12 performance assumptions that derive an assets cash flow and
13 ultimate fair value. Correct?

14 A. That's correct.

15 Q. And cash flow analysis can involve literally hundreds of
16 inputs into a model. Correct?

17 A. Between settings and inputs for this type of analysis it
18 can.

19 Q. And change in any one of those inputs can have an impact
20 on cash flows. Correct?

21 A. Of varying amounts it can.

22 Q. And MountainView generally uses a sophisticated computer
23 model called Intex to model all the variables that can affect
24 cash flow from securities. Correct?

25 A. No. Not to model the variables, per se, but to model the

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1 expected cash flows for the securities.

2 Q. Okay. So the inputs are into the model and the output is
3 expected cash flow.

4 A. That's corr --

5 Q. Correct?

6 A. That's generally correct.

7 Q. Okay. And in this case, you did not use that model to
8 actually compare recoveries under the rehabilitation plan
9 versus recoveries under the settlement on a trust-by-trust
10 basis. Correct?

11 A. Recoveries on the settlement plan? I mean, in effect, we
12 did. We essentially used Intex models to project amount of
13 losses for specific securities and then calculated what would
14 be expected to be recovered based upon the terms of the
15 rehabilitation plan as it was presented to us.

16 Q. You did that for Freddie Mac but not for any of the other
17 holders. Correct?

18 A. We did not do a specific independent analysis on the other
19 forty-seven securities to create an IPS projection of cash
20 flows.

21 Q. Okay. And part of the reason that you didn't do that was
22 you only had three business days between the date that you were
23 hired and the date of your report. Correct?

24 A. No. That was not a material factor. We analyze hundreds
25 of securities in a given day so --

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1 Q. Could you take a look at tab 2 in your binder? It's
2 Exhibit FP, page 115, line 7 -- 115, line 7. Are you there?

3 A. Yes.

4 Q. Okay. This is a deposition taken of you in this case.
5 Correct?

6 A. Page 15, line 7?

7 Q. 115.

8 A. Oh, 115.

9 Q. Are you there?

10 A. Yes.

11 Q. And this is a deposition that was taken of you. Correct?

12 A. I believe that's the case, yes.

13 Q. And you were under oath?

14 A. Yes.

15 Q. Same oath as today. Correct?

16 A. Yes.

17 Q. And did you -- were you asked these questions and did you
18 give this answer,

19 "Q. Is there anything that precluded you from gathering
20 information about securities not held by Freddie Mac from
21 Intex?

22 "A. Just availability of information. I was not presented a
23 full list of CUSIPs or security identifiers associated with the
24 ResCap FGIC population and time consideration but I did not
25 have that list of the securities at the time."

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1 Was that your answer, sir?

2 A. Yes. I believe that's correct.

3 Q. Now, there are a total of forty-seven FGIC-wrapped ResCap
4 trusts. Correct?

5 A. That's correct.

6 Q. And Freddie holds securities in only nine of those trusts.
7 Correct?

8 A. I believe that's correct.

9 Q. And there are multiple tranches in each of the trusts.
10 Correct?

11 A. That is correct.

12 Q. And for the individual tranches where Freddie holds an
13 interest, it holds a hundred percent of the interest in that
14 particular tranche. Correct?

15 A. I believe it's a hundred in all but one of them and then
16 materially close to a hundred in the last.

17 Q. And that means that nobody else but Freddie holds those
18 particular securities. Correct?

19 A. That's correct. Yes.

20 Q. And inputs for cash flow modeling are different for each
21 tranche and trust. Correct?

22 A. That is not correct.

23 Q. Could you go back to your deposition please? It's Exhibit
24 FP, page 103, line 13 -- 103 -- are you with me?

25 A. Yep, I'm there now.

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1 "Q. And so, inputs are different for each RMBS trust.

2 Correct?

3 "A. Yes. They do vary."

4 Was that your testimony?

5 A. They can vary is probably more accurate. Many of the
6 tranches are backed by the same collateral pool, and therefore,
7 those assumptions would remain the same.

8 Q. Okay. Try to listen to my question --

9 A. Okay.

10 Q. -- and answer just my question.

11 A. Okay.

12 Q. Thank you. And recoveries for each of the tranches in
13 each of the trusts may be different under the rehabilitation
14 plan. Correct?

15 A. That is generally correct. Yes.

16 Q. And each tranche of each trust may suffer different
17 degrees of loss at different times. Correct?

18 A. That is generally correct.

19 Q. And I think as you already said other than for Freddie
20 Mac, you have not assessed the impact of the rehabilitation
21 plan versus the settlement on a trust-by-trust basis. Correct?

22 A. That is generally correct.

23 Q. And that means it's possible that recoveries to Freddie
24 under the rehabilitation plan could differ from the recoveries
25 to other holders of FGIC-wrapped securities. Correct?

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1 A. To some extent that is possible, yes.

2 Q. And the fact that Freddie has made a determination
3 regarding its own recoveries on the plan versus the settlement
4 does not specifically provide a reference either way regarding
5 results for the other holders. Correct?

6 A. I think that they are a general reference, and I think I
7 stated in the deposition that based upon our knowledge of the
8 other securities as well as those specific tranches that they
9 hold that they are a representation of expected cash flows and
10 losses for certain tranches.

11 Q. Could you go to page 116 of your deposition?

12 A. Yes.

13 Q. Exhibit FP, line 9. Are you there? 116?

14 A. I am, yes.

15 Q. You were asked this question and did you give this answer?

16 "Q. And so the fact that Freddie Mac has determined that its
17 recoveries under the plan of rehabilitation are far better than
18 its recoveries under the ResCap settlement agreement does not
19 mean that other certificate holders would determine that their
20 recoveries under the plan of rehabilitation are far better than
21 their recoveries under the ResCap settlement agreement.

22 Correct?"

23 There was an objection and then you said,

24 "A. It does not specifically provide a reference either way."

25 And you went on. Was that your testimony?

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1 THE COURT: Please read the rest --

2 MR. CARNEY: Objection, Your Honor.

3 THE COURT: -- read the rest of the answer.

4 MR. BENNETT: I'll read the rest of it.

5 "A. It does not specifically provide a reference either way.
6 We evaluated those securities relative to the other trusts that
7 we are familiar with and deem them to be representative. There
8 was not an in-depth analysis to do a specific comparison of the
9 timing or magnitude of losses because I didn't have access to
10 the securities separate and aside from that. What we utilized
11 was, once again, the Lazard analysis, their base case
12 scenarios, and then the Holtzer affirmation of what the
13 expected lifetime loss scenarios would be for the ResCap
14 population and utilized that to make an independent assessment
15 for the benefit to the remaining population."

16 Was that your testimony, sir?

17 A. Yes.

18 Q. Now, under the rehabilitation plan if additional claims
19 beyond what was estimated by Lazard are made against FGIC that
20 could reduce recoveries for the policy holders. Correct?

21 A. It varies. If you're talking in a global sense for all of
22 their claims then potentially it could. Individual claims, it
23 may not have an impact directly. It's hard to assess without
24 knowing the actual projections that were used within the Lazard
25 analysis.

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1 Q. And you have not made an assessment of the likelihood of
2 additional claims. Correct?

3 A. Across the entire exposure of FGIC or specific to these
4 securities?

5 Q. Specific to these securities, I believe.

6 A. Specific to these securities, we do analyze them under
7 various different scenarios as we're creating our base case.
8 We presented what we believe to be the most likely base case
9 scenario in this analysis.

10 Q. Right.

11 A. We do not run a specific hi-low or --

12 Q. And with regard to FGIC's own --

13 THE COURT: Wait. Had you finished your answer?

14 THE WITNESS: I believe so. Yes.

15 THE COURT: Okay. Go ahead.

16 THE WITNESS: I'm sorry.

17 THE COURT: Ask your next question.

18 Q. With regard to FGIC's overall exposure to claims, you
19 haven't done any assessment of the likelihood of --

20 A. Okay. So overall --

21 Q. -- additional claims?

22 THE COURT: Just --

23 THE WITNESS: Sorry.

24 THE COURT: -- let him finish his question.

25 THE WITNESS: Okay.

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1 THE COURT: And then I'll make sure that you get to
2 finish your answer. Okay?

3 THE WITNESS: Okay. Thank you.

4 THE COURT: All right. Ask your question again, Mr.
5 Bennett.

6 Q. Overall exposure, that's not something for which you've
7 done an assessment of the likelihood of additional claims.
8 Correct?

9 MR. CARNEY: I'll object to form, Your Honor, I'm not
10 quite sure what he's asking.

11 THE COURT: Overruled.

12 A. So overall, you're speaking to all claims that could be
13 coming into FGIC regardless of RMBS securities or otherwise.

14 Q. Correct.

15 A. We did not have access to the sufficient models or
16 information from Lazard to be able to assess that.

17 Q. All you have is the base and stress case scenarios that
18 Lazard did. Correct?

19 A. That is correct.

20 Q. And you're aware that Detroit recently filed for
21 bankruptcy. Correct?

22 A. I am aware, yes.

23 Q. And you know that FGIC does have some exposure to Detroit.
24 Correct?

25 A. Yes, I think in my deposition you presented that to me.

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1 Q. And you have done no review of FGIC's exposure to
2 municipal bonds issued by Detroit. Correct?

3 A. We did not do a specific analysis on that.

4 Q. You were present in the court last Friday for the
5 testimony from Mr. John Dubel. Correct?

6 A. I was. Yes.

7 Q. And you are aware that Mr. Dubel testified that FGIC
8 recently increased its estimate of reserve losses by 800
9 million dollars in a single quarter. Correct?

10 A. Yes. I believe I heard that.

11 Q. And you're not in a position to contradict that testimony.
12 Correct?

13 A. If that's what they did, certainly not.

14 Q. And you have seen the most recent financial quarterly
15 report from FGIC. Correct?

16 A. I believe I've reviewed it. Yes.

17 Q. And to the best of your knowledge, it's accurate.
18 Correct?

19 A. I can't say that I confirm that or not, but I have no
20 reason to not believe his statement.

21 Q. Okay. And as part of your opinion, you didn't do any
22 independent economic forecasting. Correct?

23 A. As part of our daily analysis for these types of
24 securities, we are constantly reviewing economic scenarios,
25 expected outcomes as it relates to this type of valuation.

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1 Q. Could you go to page 87 in your deposition, sir?

2 A. Yes.

3 Q. It's Exhibit FP.

4 A. Yes.

5 Q. Were you asked this question at line 8:

6 "Q. What have you done to predict the status of the economy
7 through 2052?

8 "A. Once again, I rely upon industry research and forecasts
9 from various different vendors we subscribe to. We use that in
10 conjunction of our various different sources to come up with
11 our base analysis. We did not do an independent economic
12 forecast for any of these scenarios."

13 Was that your testimony, sir?

14 A. I believe so, yes.

15 Q. You did give an Internet interview in May of 2013.

16 Correct?

17 A. That sounds like an approximate time that I conducted one.

18 Q. And that interview talked about RMBS, CMBS, loan pricing
19 and outlooks. Correct?

20 A. I think that was the topic. Yes.

21 Q. And you agree with the statement, "It is difficult, at
22 present, to do a fair evaluation of RMBS securities because of
23 illiquid markets." Correct?

24 MR. CARNEY: Objection, Your Honor. Does he have a
25 transcript of this radio broadcast?

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1 A. I would --

2 THE COURT: Overruled.

3 A. -- I would need to see the context of the question to be
4 able to evaluate that.

5 Q. Well, if you go to page 185 of your deposition, Exhibit
6 FP --

7 A. Yes.

8 Q. -- were you asked this question and did you give this
9 answer at page 185, line 7:

10 "Q. And as part of that interview, do you recall saying that
11 it's difficult at present to do fair valuation of RMBS
12 securities because of illiquid markets?

13 "A. I don't recall specifically what was presented but that,
14 that certainly is a consideration, yes."

15 Was that your testimony, sir?

16 MR. CARNEY: Objection.

17 THE COURT: Overruled.

18 A. Yes, I believe that's the case.

19 Q. And you agree with the statement that there are at present
20 uncertainties with the health of the economy. Correct?

21 A. I think there -- is this specific to this question you
22 just asked, or is this with regard to another topic? Just in
23 general?

24 Q. I'm just asking you whether you agree with the statement,
25 at present, there are uncertainties with the health of the

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1 economy?

2 A. I think there's general uncertainties, yes. Economic
3 conditions are improving. Home prices are improving.
4 Everything seems to be doing much better. But there are
5 uncertainties with every forecast.

6 Q. Okay. And you don't know whether if the economy improves
7 the FGIC-insured trusts would have decreased claims against
8 FGIC reducing their payouts under the plan. Correct?

9 A. Whether the economic condition deteriorates, whether they
10 would --

11 Q. No, no. Whether if the economy improves the FGIC-insured
12 trusts would have decreased claims against FGIC reducing their
13 payouts under the plan? You don't know whether that's the
14 case. Correct?

15 A. I have not done a specific analysis. From a general
16 context of the securities that we do price, there are
17 correlations to be made. As home prices increase,
18 delinquencies tend to decrease, losses can be reduced.
19 Conversely, I think the same thing holds true for other types
20 of claims that may be submitted to FGIC.

21 Q. I'm asking you, sir, you don't know because you didn't do
22 an analysis to determine whether if the economy improves the
23 FGIC-insured trusts would have decreased claims against FGIC
24 reducing payouts. Is that correct?

25 MR. CARNEY: Objection. I think he answered the

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1 question.

2 THE COURT: He don't think he did. Overruled.

3 A. I can't say to a specific amount.

4 THE COURT: Do you have a page and line number in the
5 deposition?

6 MR. BENNETT: Sure.

7 Q. It's at page 96 of the deposition. It's Exhibit FP. It
8 starts at line 2, a series of questions.

9 "Q. In estimating Freddie Mac's future losses, did you
10 consider how improvements in the economy would impact future
11 losses?

12 "A. No. I did not run alternative scenarios. We applied a
13 base case analysis for their holdings as well to be consistent
14 with or as consistent as possible with the Lazard analysis.

15 "Q. Isn't it true that improvements in the economy would also
16 improve the performance of the FGIC-insured trusts?

17 "A. It varies greatly. You have to look at the actual
18 collateral performance of that specific security. You have to
19 look at then the deal cash flow waterfalls and how it would
20 impact the individual securities. It's impossible for me to
21 say on a blanket statement."

22 Was that your testimony, sir?

23 A. Yes.

24 Q. Your trial declaration in this case mentions risks
25 associated with accepting the FGIC settlement. Correct?

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1 A. Yes, I believe so.

2 Q. And your testimony is that commutation payment exposes
3 holders to risk because their claims against FGIC could
4 increase in size. Correct?

5 A. Yes, I believe I make that statement.

6 Q. But you haven't done any analysis of the likelihood that
7 claims against FGIC will either increase or decrease. Isn't
8 that true?

9 A. We submitted a base case analysis. In the course of our
10 evaluation of these types of securities, we do look at
11 alternative outcomes and are aware of general impacts.

12 Q. But you haven't done an analysis of the likelihood of
13 future claims either increasing or decreasing. Isn't that
14 true?

15 A. That's correct. I did not submit a specific analysis for
16 that.

17 Q. Now, MountainView, your company, specializes in fair
18 valuation of mortgage and other asset-backed securities.
19 Correct?

20 A. That's generally correct, yes.

21 Q. And you have no experience analyzing settlement
22 agreements. Correct?

23 A. Well, we do not -- we are not party of a settle --

24 THE COURT: Can you answer the question he was asking?

25 A. No, I do not conduct settlement agreement analysis.

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1 Q. And you have no experience analyzing litigation
2 recoveries. Correct?

3 A. We run scenarios for litigation recoveries.

4 THE COURT: Can you answer the question that was
5 asked?

6 A. So yes, we have some experience.

7 THE COURT: Do you? The question was --

8 THE WITNESS: Yes, I have been involved in some of that
9 analysis.

10 THE COURT: Okay. Next question.

11 Q. Go to page 24 of your deposition. It's Exhibit FP, line
12 20. Were you asked this question? Did you give this answer?

13 "Q. You do not have any prior experience evaluating litigation
14 claims. Is that correct?

15 "A. That's correct."

16 Was that your testimony, sir?

17 A. It was. My understanding --

18 THE COURT: Next question.

19 Q. Now, in formulating your opinion, you were not asked to
20 include an analysis of risk associating -- associated with
21 litigating the FGIC rep and warranty claims against ResCap.
22 Correct?

23 A. In a sense we were. We were asked to evaluate the -- what
24 we believed to be the better outcome for our client. As part
25 of that analysis, one-half of the equation has potential upside

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1 to rep and warranties claims, the other half does not. And so
2 while it's not explicitly implied, we did conduct that as part
3 of our analysis.

4 Q. So go to page 33 of your deposition. That's Exhibit FP.
5 Were you asked these questions, did you give these answers?
6 Question at line 6.

7 "Q. You were not asked to consider the risks that are posed by
8 litigating claims relating to violations of representations and
9 warranties. Correct?

10 "A. That was not a specific request. No.

11 "Q. Was that embedded in any other request?

12 "A. I think that aspects of that are included in our
13 evaluation at a high level and understanding of the two
14 different plans."

15 Was that your testimony, sir?

16 A. It was. Yes, sir.

17 Q. And you've never actually reviewed the FGIC proofs of
18 claim in this case. Correct?

19 A. That is correct.

20 Q. And you haven't considered the possibility that FGIC's
21 claims might be subordinated in this case. Correct?

22 A. We did not do a specific analysis. We based it upon the
23 information presented to us from the Holtzer affirmation.

24 Q. And you didn't do anything to consider the cost to FGIC of
25 litigating claims. Correct?

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1 A. We did not do a specific analysis to that effect.

2 Q. And you didn't do any analysis to consider how litigating
3 the claims might affect the timing of payouts to the trust.
4 Correct?

5 A. We did not do a specific analysis to that effect.

6 Q. And you didn't do any analysis to consider whether if
7 litigation produced some proceeds, parts of the proceeds might
8 be held in reserve and not paid out immediately. Correct?

9 A. That is generally correct. Yes.

10 Q. For your purposes and your opinion, you simply assume that
11 even absent the settlement agreement between FGIC and the
12 debtors, FGIC would somehow recover 206.5 million dollars on
13 its claims in litigation. Isn't that true?

14 A. I think it's a reasonable proxy, yes, that under this
15 circumstance of a settlement agreement, they were willing to
16 accept the 206 to offset those claims that that's a reasonable
17 proxy for what might be expected outside of the settlement.

18 Q. Can you listen to my question?

19 That was an assumption that you made. Correct, sir?

20 A. Yes, it was based upon the information provided. Yes.

21 Q. You just assumed that was true, correct, for purposes of
22 your opinion?

23 A. Yes.

24 Q. Let's talk about discount rates for a second, okay?

25 A. Okay.

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1 Q. Now, the purpose of a discount rate, in part, is to
2 account for the benefit of receiving money now as opposed to
3 having to wait for the money in the future. Correct?

4 A. It is. It accounts for time-value of money, as you
5 mentioned, as well as then also uncertainty and risk of
6 expected cash flows not coming in as anticipated.

7 Q. And your opinion in this case does not contest the
8 appropriateness of the discount rates applied to estimates of
9 payouts under the FGIC rehabilitation plan. Correct?

10 A. I did not contest that, no.

11 Q. And, in fact, your opinion is that a discount rate of ten
12 to twenty percent is a reasonable discount to account for the
13 uncertainties and timing of the cash flows within the FGIC
14 rehabilitation plan. Correct?

15 A. I believe that's generally correct. Yes.

16 Q. As part of your opinion, you have not reviewed the
17 proposed plan and plan support agreement negotiated in
18 conjunction with the FGIC settlement. Correct?

19 A. I believe we reviewed aspects of it, but I did not do a
20 specific analysis of it.

21 Q. And in formulating your opinion, you were not asked to
22 consider benefits that the plan support agreement would have
23 along with the FGIC settlement. Correct?

24 A. I did not do a specific analysis on the plan support
25 agreement in itself.

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1 Q. And you did not consider the fact that as part of the plan
2 support agreement, Ally will make a 2.1-billion-dollar
3 contribution to the bankruptcy estate. Correct?

4 A. Subsequent to my submitting our analysis, we have reviewed
5 that information.

6 Q. So you do know now that that's part of the plan support
7 agreement. Correct?

8 A. I believe that that is part of it, yes.

9 Q. And you have not considered what benefit the larger plan
10 support agreement would have on the FGIC-insured trusts.
11 Correct?

12 A. My understanding; the bondholders have a valid claim to
13 the -- within the trust to Ally, whether it's within the
14 agreement or not. We did not consider it on either side of the
15 equation, no.

16 Q. Well, I'm not sure what your answer means. Could you go
17 to your deposition page 55 --

18 A. Yes.

19 Q. -- please? That's Exhibit FP at line 4. Are you there?

20 A. I am.

21 "Q. You did not consider the impact that the" -- "that that
22 larger agreement might have on the FGIC insured trusts,
23 correct?"

24 There's an objection, and then you say, "Can you specify
25 what -- what type of impact?"

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1 "Q. Sure. The plan support agreement includes an agreement
2 that Ally will make a contribution of 2.1 billion dollars to
3 the bankruptcy estate, correct?

4 "A. I did not specifically include that as part of our
5 analysis."

6 Was that your testimony, sir?

7 A. That was.

8 Q. And you agree that there is at least some uncertainty as
9 to whether a plan of reorganization could ever be confirmed
10 absent the FGIC settlement, correct?

11 A. There's uncertainty, yes.

12 Q. And you haven't made any assessment of what the discount
13 for uncertainty should be for purposes of comparing the FGIC
14 rehabilitation plan to the FGIC settlement, correct?

15 A. Again, I think we reviewed the discount rates that were
16 presented to us by Lazard. And based upon our knowledge of
17 analyzing these types of securities, and -- we believe that ten
18 to twenty percent discount rate was reasonable. I did not do a
19 specific independent analysis to that, though.

20 MR. BENNETT: No further questions, Your Honor.

21 THE COURT: Thank you. Redirect? Well, any further
22 cross?

23 MR. DEVORE: Yes, Your Honor.

24 THE COURT: All right. Come on up.

25 CROSS-EXAMINATION

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1 BY MR. DEVORE:

2 Q. Good morning, Mr. Gibson. My name is Andrew Devore. I'm
3 from Ropes & Gray, and we represent the steering committee
4 of RM--

5 THE COURT: Just tell me your last name again. I'm
6 sorry.

7 MR. DEVORE: Devore, D-E-V-O-R-E. We represent the
8 steering committee of RMBS investors, also known as the Kathy
9 Patrick Group.

10 THE COURT: Go ahead.

11 Q. Mr. Gibson, I'd like to focus your attention on the table
12 on top of page 16 -- excuse me -- of your direct testimony. Do
13 you have that in front of you?

14 A. What's -- what section is that? I don't --

15 Q. It's tab 1 of your binder.

16 A. Tab 1, table 16 --

17 Q. Of page 16.

18 THE COURT: The top of page 16.

19 A. Page 16. All right.

20 Q. If you could just let me know when you're there.

21 A. I'm there.

22 Q. This table summarizes your conclusions regarding a
23 comparison of recoveries under the FGIC rehabilitation plan
24 versus the proposed FGIC settlement with respect to all FGIC
25 insured trust. Is that fair to say?

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1 A. Yes, that's correct.

2 Q. And this table shows that in your opinion the
3 rehabilitation plan is in the best interests of all FGIC
4 wrapped holders, generally. Is that your opinion?

5 A. Yes.

6 Q. Okay. In the chart, you include 41.3 million dollars in
7 litigation upside in each of the FGIC rehabilitation plan
8 scenarios that you presented. Is that right?

9 A. That is correct.

10 Q. And this 41.3 million dollars in litigation upside
11 represents the FGIC insured trusts' pro rata share of 206.5
12 million dollars in recoveries that FGIC is projected to receive
13 under the proposed joint Chapter 11 plan. Is that right?

14 A. I believe that's correct, yes.

15 Q. And are you aware that the FGIC settlement is a condition
16 precedent to confirmation of the proposed joint Chapter 11
17 plan?

18 A. I'm aware of that. Again, we view it as a proxy for what
19 might be expected on other terms absent a settlement. There's
20 no reason why they don't have a valid claim for those damages.

21 Q. So you are aware that the FGIC settlement is a condition
22 precedent to the Chapter 11 plan?

23 A. I'm aware of that.

24 Q. Have you done --

25 A. I'm also aware that Mr. --

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1 THE COURT: You answered the question.

2 THE WITNESS: Okay, sorry.

3 THE COURT: Go ahead.

4 Q. Have you done any analysis of the likelihood of FGIC
5 receiving these recovery amounts in the bankruptcy case if the
6 FGIC settlement is not approved?

7 A. It's a high level analysis in the sense that we reviewed
8 deposition from Mr. Kruger, CRO for ResCap, who indicated that
9 absent the settle agreement -- settlement agreement, he would
10 be fine with settling at those levels. So in his opinion, he
11 was okay with that number.

12 Q. Have you done any analysis as to the likelihood of FGIC
13 receiving these amounts in the absence of the Chapter 11 plan?

14 A. That's high level analysis.

15 Q. As to likelihood?

16 A. Yeah. If he's agreeing to it -- it says absent this
17 settlement, I would be okay with that level. That's a high
18 level analysis in my opinion.

19 Q. Do you have an understanding of all the intercompany
20 settlements that are embodied in the joint Chapter 11 plan?

21 A. I am not intimately familiar with it, no.

22 Q. So you have no basis to state whether those settlements
23 would still exist in the absence of the FGIC settlement. Isn't
24 that right?

25 A. I gave you my basis.

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1 Q. So that's --

2 THE COURT: Can you --

3 Q. -- correct?

4 THE COURT: -- answer the question?

5 A. No -- well, yes, I believe I have basis.

6 Q. Turning back to the 41.3 million dollars in litigation
7 upside in that chart, do you have that in front of you?

8 A. I do, yes.

9 Q. You would agree that this 41.3 million dollar in
10 litigation upside figure would -- I'll --

11 MR. DEVORE: For the record, I'll start over.

12 Q. You would agree that this 41.3 million dollar litigation
13 upside figure would, at a minimum, need to be discounted to
14 reflect the risk that recoveries provided in the joint Chapter
15 11 plan would not be realized in the absence of the FGIC
16 settlement. Isn't that right?

17 A. Again, I believe that it --

18 THE COURT: Can you answer that question, Mr. Gibson?

19 A. It's possible that some discount might be warranted. I
20 don't have any way of measuring that specifically.

21 Q. Can you turn to your deposition transcript, which is tab
22 2?

23 A. Yes.

24 Q. Page 154, lines 20 -- lines 17 through 25. And if you
25 could let me know when you're there.

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1 A. Yes.

2 Q. Line 17.

3 "Q. Would you agree that the 41.3-million-dollar number would
4 have to be discounted, at least, in order to represent the
5 uncertainty of the confirmation of that joint Chapter 11 plan
6 in the absence of the FGIC settlement?

7 "A. Yes. I would say that it probably could or should be
8 discounted to some effect."

9 That was your testimony?

10 A. It was, yes.

11 Q. You are aware that Duff & Phelps has projected that the
12 FGIC insured trusts are to receive ninety-two million dollars
13 under the proposed Chapter 11 plan. Isn't that right?

14 A. Yes, I believe I've seen that.

15 Q. Okay. Assuming that the FGIC insured trusts are to
16 receive ninety-two million dollars in recoveries under the
17 proposed Chapter 11 plan, on account of representation and
18 warranty claims, that would represent litigation upside as you
19 define it, correct?

20 A. That's correct. It's a form of litigation upside.

21 Q. So to make your chart an apples-to-apples comparison, the
22 litigation upside under the proposed Chapter 11 plan would need
23 to be added to the settlement scenario. Isn't that right?

24 A. Not only to the settlement scenario, but also to the other
25 scenarios. I don't -- I'm not aware that they would forgo any

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1 of those rights to those claims by adhering to the
2 rehabilitation plan.

3 Q. That's because you don't unders -- you don't know the
4 conditions to the joint Chapter 11 plan?

5 A. I've subsequently reviewed specifically this contribution,
6 and I don't -- I have not been presented any information that
7 would indicate that they would waive those rights under the
8 rehabilitation.

9 Q. Have you been presented with any information that they
10 would retain those rights in the absence of the joint Chapter
11 11 plan?

12 A. My general understanding is yes.

13 Q. And what is the basis of that understanding?

14 A. Once again, just a knowledge of the claims as they were
15 put forth towards Ally; that it is not con -- not necessarily
16 their claims are not contingent upon one rehabilitation or the
17 settlement plan, specifically.

18 Q. Is that the extent of your understanding?

19 A. It's a general knowledge, yes.

20 MR. DEVORE: That's all I have, Your Honor.

21 THE COURT: All right. Any further cross-examination?
22 Redirect? Mr. Carney?

23 MR. CARNEY: Michael Carney from McKool Smith for
24 Freddie Mac.

25 REDIRECT EXAMINATION

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1 BY MR. CARNEY:

2 Q. It was mentioned earlier on -- in your deposition on page
3 154, I believe, line 17, that you had said that the 41.3-
4 million-dollar litigation upside would have to be, and I'll
5 quote, "probably could or should be discounted to some effect."

6 Do you have any idea of what that effect would be, how much?

7 A. I haven't done a specific analysis. I think that in
8 its -- as it stands, it's a reasonable expectation based upon
9 the figures that I've seen in the settlement.

10 Q. And you understand that the --

11 MR. CARNEY: Strike that.

12 Q. Do you have an understanding of the -- what the payout on
13 those litigation claims would be?

14 A. To individual trusts?

15 Q. No, just the timing aspect?

16 A. I would imagine it's -- under the settlement agreement?
17 I'm sorry.

18 MR. CARNEY: Strike that.

19 Q. Now, do you have an understanding of whether FGIC has any
20 exposure to the City of Detroit?

21 A. I do have a general understanding that they do.

22 Q. And can you tell me what the general understanding is?

23 A. I believe they have insurance policies on various
24 municipal debt obligations.

25 Q. And you -- you testified that you understand that FGIC

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1 increased its reserves because of that?

2 A. Yes, I did.

3 Q. Okay. And do you believe that that increase in reserves
4 would have any effect on the base case recovery?

5 A. I'm not aware of any update to the base case scenario as
6 presented by Lazard. I believe that at the time they ran the
7 analysis they were aware that Detroit was a distressed city,
8 and there probably was risk within those obligations. I have
9 no basis to make an adjustment to the base case scenario.

10 Q. And you were asked earlier about your knowledge of certain
11 litigation claims that FGIC has?

12 A. Yes.

13 Q. In connection with that, did you review any -- the --
14 either declarations submitted by Mr. Lipps or Mr. Kruger?

15 A. I did.

16 Q. And after reviewing those declarations, did you -- what
17 was your understanding of those claims?

18 MR. BENNETT: Objection, Your Honor. It's beyond his
19 expert --

20 THE COURT: He's ent --

21 MR. CARNEY: He's entitled to look at whatever he
22 wants to form his expert opinion. He testified he reviewed
23 those declarations. I think he can say what his thoughts were.

24 THE COURT: Overruled. Go ahead and answer.

25 A. With regard to Mr. Kruger, again, he stated in the

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1 deposition that I reviewed that all else being equal, if the
2 settlement agreement was not accepted, he would be perfectly
3 fine with the 206.5 million dollar amount to settle those
4 claims.

5 With regard to Robert Major's report, you know, it was a
6 general understanding that from his deposition that he believed
7 there is material risk and merit to the claims of -- within
8 the -- within those --

9 Q. Do you mean Mr. Major or Mr. Lipps?

10 A. Sorry, Lipps. Sorry. Yeah, I'm sorry.

11 Q. Go on.

12 A. That there was merit and therefore risk to those claims.

13 Q. Okay. Now, I think you were asked a question earlier
14 about the -- your opinion of the riskiness of the
15 settlement/commutation vis-a-vis the rehabilitation plan.

16 Could you just possibly expand on what your view is of that;
17 why one is riskier than the other, or not?

18 A. Well, effectively, monoline insurance wrapped provisions
19 are a form of credit enhancement. They are designed,
20 essentially, to protect against losses coming in greater than
21 original anticipation. So within that context, even under
22 current circumstances, even at a reduced amount of payout, that
23 provision still holds true. If losses were to come in on
24 individual trusts higher than expected, you would receive some
25 incremental benefit from the monoline wrap provision.

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1 A commutation of that locks you into a base case scenario,
2 such that if losses were to increase, you would receive no
3 further benefit.

4 Q. Okay.

5 MR. CARNEY: That's all I have, Your Honor.

6 THE COURT: Thank you --

7 MR. CARNEY: Thank you.

8 THE COURT: -- very much. Any other redirect form
9 anybody? Further cross-examination?

10 MR. BENNETT: Steven Bennett from Jones Day for FGIC,
11 Your Honor. May I proceed?

12 THE COURT: Yeah, go ahead.

13 RECROSS-EXAMINATION

14 BY MR. BENNETT:

15 Q. With regard to Mr. Kruger's testimony that he himself
16 would have been happy to settle the thing without making a
17 payment out to FGIC, that's not a surprise to you, is it?

18 MR. CARNEY: Objection. I don't know if he testified
19 to that.

20 THE COURT: Sustained.

21 Q. Whatever Mr. Kruger said about his side of the settlement
22 deal, he'd be willing to do that deal if FGIC didn't insist on
23 the consideration that it was asking for. That was your
24 understanding of his testimony, correct?

25 MR. CARNEY: Objection. Vague.

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1 THE COURT: Overruled.

2 A. I would have to review his specific comments. My general
3 understanding is yes, he would accept it, all else being equal.

4 Q. And that's not a surprise to you that on behalf of the
5 debtors he'd be happy with a settlement that didn't give any
6 consideration to FGIC. Isn't that true?

7 A. It's true to the sense that yes, I think it seems like a
8 favorable deal for him. If outside of this settlement, FGIC
9 would not get a commutation its potential they would have or
10 demand higher amounts under these claims.

11 Q. And from that, the fact that Mr. Kruger thought it would
12 be okay for him to accept a settlement where there wasn't any
13 commutation, you can't extrapolate some possibility that that
14 deal -- the overall plan settlement deal can be made without
15 the arrangement that FGIC gets under the settlement. Isn't
16 that true?

17 MR. CARNEY: Objection. That's beyond the scope of
18 redirect.

19 THE COURT: Overruled.

20 A. I believe it provides good context because it, if
21 anything, provides more of a downside or a conservative
22 estimate of that claim. Within the confines of this
23 settlement, the two parties were willing to offset their
24 opposing claims for 206 on the part of the debtors; commutation
25 plus other things on the part of FGIC.

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1 Outside of that, FGIC potentially would have higher claims
2 or want a higher compensation. Therefore, to be conservative
3 and assume 206, I think was reasonable.

4 Q. Okay.

5 MR. BENNETT: Nothing further, Your Honor.

6 THE COURT: All right. Any other cross?

7 All right. You're excused. Thank you very much.

8 Next witness.

9 MR. BAIIO: Your Honor, we will be calling Mr.
10 Goldstein. May we have a minute? We will be calling Mr.
11 Goldstein. I just need a minute to move things around.

12 THE COURT: So my law clerk handed me a note -- and
13 you can check your own time -- but according to their
14 calculations, they believe the objectors have twenty --
15 approximately twenty-one minutes left.

16 MR. BENNETT: How much, Your Honor?

17 MR. BAIIO: Twenty-one minutes. We'll talk quickly,
18 Your Honor.

19 THE COURT: I'm sorry. Please raise your right hand.

20 (Witness sworn)

21 THE COURT: Please have a seat.

22 MR. BAIIO: Your Honor, we offer Mr. Goldstein's
23 declaration, which was filed on August 14th, and it is document
24 number 4675.

25 THE COURT: Okay.

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1 MR. KERR: No objection, Your Honor.

2 THE COURT: All right. It's in evidence.

3 (Goldstein's Declaration was hereby received into evidence as
4 Opposing Parties' Exhibit, as of this date.)

5 THE COURT: Cross-examination, Mr. Kerr?

6 MR. KERR: Yes, Your Honor.

7 THE COURT: Mr. Bennett, you're going to do it again?

8 MR. BENNETT: Can we have the binders? Thank you.

9 Have we sworn the witness?

10 THE COURT: No, we haven't. Good. You don't have to
11 stand.

12 THE WITNESS: I'm sorry.

13 THE COURT: You have to be sworn. Stand and raise
14 your hand.

15 THE CLERK: He's sworn.

16 THE WITNESS: I did.

17 THE COURT: You did? I missed it. Thank you. Way
18 ahead of me. Go ahead.

19 MR. BENNETT: Once did about ten minutes of a
20 deposition like that, and then we went back.

21 THE COURT: You know, I just read a report of a
22 decision where a jury hadn't been sworn, and the verdict had to
23 be reversed just last week.

24 MR. BENNETT: You can never have too many --

25 THE COURT: No.

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1 MR. BENNETT: -- swearing sessions, Your Honor.

2 THE COURT: No. That's true. Go ahead. Go ahead,
3 Mr. Bennett.

4 MR. BENNETT: May I proceed, Your Honor?

5 THE COURT: Yes, please. Go ahead.

6 MR. BENNETT: So Steven Bennett from Jones Day for
7 FGIC.

8 CROSS-EXAMINATION

9 BY MR. BENNETT:

10 Q. Mr. Goldstein, your opinion in this case, in part, is that
11 Duff & Phelps were charged with assessing a settlement offer
12 from FGIC and comparing it to the FGIC rehabilitation plan,
13 correct?

14 A. Yes.

15 Q. And in your opinion, simply by tweaking the FGIC offer,
16 Duff & Phelps could have justified a higher offer than the 253-
17 million-dollar commutation payment, correct?

18 A. I'm not sure I agree with the classification or the
19 termina -- term "tweaking". We certainly assessed the offer
20 that was provided by FGIC and felt that that was -- there were
21 items within that offer that could have been tweaked and
22 discussed more fully and investigated more fully.

23 Q. Well, I'm actually using the tweaking word that you --

24 A. Yeah.

25 Q. -- used in your --

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1 A. Yeah, I know.

2 Q. -- deposition.

3 A. Okay.

4 Q. If you want to use something else, tell me what it is?

5 A. That's fine.

6 Q. "Tweaking." Okay, fine.

7 A. Adjusting.

8 Q. And you have not expressed an opinion as to whether a
9 higher cash payment amount actually could have been negotiated
10 from FGIC, correct? That's not in your opinions anywhere?

11 A. My opinion is not that -- with -- I think there should
12 have been a higher cash settlement offer negotiated.

13 Q. Okay. My question is you haven't expressed opinions as to
14 whether it was actually possible to negotiate a higher amount,
15 correct?

16 A. I'm not sure anybody would be able to know --

17 THE COURT: Can you answer the question?

18 THE WITNESS: I don't understand the question.

19 THE COURT: Did --

20 THE WITNESS: I mean, just --

21 THE COURT: Listen carefully. Go ahead. Ask your
22 question again, Mr. Bennett.

23 MR. BENNETT: Yes.

24 Q. You haven't expressed an opinion as to whether a higher
25 cash payment amount actually could have been negotiated from

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1 FGIC, correct?

2 A. True.

3 Q. Now, you make some comments in your opinions about the
4 Duff report, correct?

5 A. Yes.

6 Q. And you are not suggesting that in order for the trustees
7 to have reasonably rep -- relied on Duff's advice, Duff &
8 Phelps had to provide to the trustees all the information that
9 it had reviewed in connection with formulating its assessment.
10 Isn't that true?

11 A. I -- when you use the term "all", then certainly not all
12 of the information; relevant sufficient information to make
13 their decision.

14 Q. And it's your view that the trustees did not have to
15 independently validate and assess the conclusions in the Duff &
16 Phelps opinion independent of the advice that Duff provided,
17 correct?

18 MR. BAIO: Object to the form.

19 THE COURT: Overruled.

20 A. If you could read that question again. I'm --

21 Q. Yeah. It's not your view that the trustees had to
22 independently validate and assess the conclusions that Duff &
23 Phelps came to independent of what -- the presentations that
24 they received from Duff & Phelps?

25 MR. BAIO: Object to the form.

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1 THE COURT: Overruled.

2 A. If what you're saying is that they couldn't rely on Duff &
3 Phelps, I believe that they had an obligation to consider the
4 Duff & Phelps report. And if there were issues where items
5 that they identified or were known from the Duff & Phelps
6 report, they had an obligation to inquire as to that.

7 Q. Could you take a look at your deposition, please? It's
8 tab 2, Exhibit FN.

9 A. I'm there.

10 Q. Page 42, line 3.

11 A. Yes.

12 Q. Were you asked this question, and did you give this
13 answer?

14 "Q. In paragraph 11 of your report, on page 5, you say 'and my
15 analysis of the D&P report, identified inconsistencies,
16 omissions and the absence of relevant information that is
17 necessary to validate, recompute and assess the conclusions
18 arrived by D&P.' Is it your opinion that in order for the FGIC
19 trustees to have relied on the Duff report that the report must
20 have contained information necessary to validate, recompute and
21 assess the conclusions independent from what the expert
22 provided?"

23 There's an objection, and then you say:

24 "A. Nothing I am saying here indicates that the trustees had
25 to do that, but what they needed to be assured was that their

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1 expert did."

2 Was that your testimony, sir?

3 A. That was.

4 Q. You're not aware the details of the negotiations that led
5 to the 253-million-dollar cash term in the settlement
6 agreement, correct?

7 A. I am not.

8 MR. BAIO: Object. Mediation.

9 MR. BENNETT: Exactly.

10 THE COURT: Yes, exactly the point.

11 MR. BENNETT: Exactly.

12 THE COURT: Overruled.

13 A. I am not.

14 THE COURT: He said "I am not."

15 Q. And you don't have an opinion as to the likelihood that
16 the plan of reorganization could be negotiated absent the FGIC
17 settlement, correct?

18 A. I have no reason to know that.

19 Q. And you didn't have an opinion as to the effect on
20 stakeholders if the plan of reorganization proposed in
21 connection with the FGIC settlement is not approved?

22 A. I have no knowledge of that.

23 Q. And you don't have an opinion on the likelihood that Ally
24 Financial would agree to contribute 2.1 billion dollars to the
25 ResCap bankruptcy estate absent the FGIC settlement agreement,

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1 correct?

2 A. I don't know the -- all the parameters, but all I have is
3 that there was a willingness at this point with the set of
4 circumstances to make that contribution to the plan.

5 Q. Well, let me ask you a hypothetical, sir. Independent of
6 the mediation privilege, if you knew that the 253-million-
7 dollar number had been heavily negotiated and if you knew that
8 there was no possibility of obtaining a higher cash offer, in
9 the context of the overall settlement, would your opinion be
10 that the trustees should have accepted the deal?

11 A. First, the hypothetical -- the -- if I were not provided
12 the analysis that I was provided, that is the calculation as to
13 how they got to the 253, that might have some credence to it.
14 But I have from the opposing side the full detail of how their
15 claim -- how their offer was arrived at. And those particular
16 issues, the parameters and the calculations contained within
17 that offer, are the things that lead me to believe that there
18 was a -- there was more money available and that there should
19 have been further negotiation.

20 I didn't understand that there was an offer of 253, take
21 it or leave it; that these numbers had within them, as we
22 talked -- or there was testimony earlier rem -- regarding the
23 haircut percentage, as well as I have a disagreement regarding
24 the premium waiver that apparently is part of the calculation
25 of the benefit.

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1 All those things were apparent in the offer. And so I do
2 believe there was more money available. The hypothetical
3 doesn't make any sense, because they gave the calculation and
4 saw the calculation in front of them.

5 Q. So you can't answer the hypothetical? Is that your
6 testimony?

7 MR. BAIO: Object to the form.

8 THE COURT: Sustained. Ask another question.

9 Q. Let me ask it again. If you knew -- this is a
10 hypothetical, okay, whatever your explanation of what you think
11 was -- else was going on. If this was the situation -- there's
12 a 253-million-dollar number. It's been heavily negotiated.
13 And at this point, there is no possibility of obtaining a
14 higher cash offer, and the rest of the settlement deal,
15 including the plan support agreement, is on the table; is it
16 your testimony the trustees should have said forget it, we're
17 not doing the deal? Is that your testimony?

18 A. Well, in fact, within that hypothetical, I would have
19 argued for more money. If we were really the condition
20 precedent to all of this, there might have been some
21 additional --

22 THE COURT: Mr. Goldstein --

23 A. -- leverage.

24 THE COURT: -- you were asked to make certain
25 assumptions.

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1 THE WITNESS: I was.

2 THE COURT: Answer the question.

3 THE WITNESS: I understand that, Your Honor. If --

4 THE COURT: Can you answer the question as asked?

5 A. It's a take it or leave it offer?

6 Q. Correct.

7 A. And I would -- so that would mean then you were stuck with
8 the take it or leave it. And you decide to take it or not, but
9 if the -- I mean, the parties still have the right not to agree
10 to an offer.

11 Q. In good faith, in your view, the trustees, under those
12 circumstances, could have accepted the deal, correct?

13 MR. BAIO: Object to the form.

14 THE COURT: Overruled.

15 A. Not if they had information that was contrary to that.

16 THE COURT: Mr. Goldstein, you were asked a
17 hypothetical question. Can you answer that question?

18 MR. BAIO: Can we hear it again, Your Honor?

19 THE COURT: Sure.

20 MR. BAIO: I'm sorry. Just so it's clear.

21 THE COURT: Listen it carefully.

22 THE WITNESS: Sure.

23 THE COURT: And just answer the question that's asked.
24 Don't throw in other facts. It's a hypothetical question.

25 MR. BENNETT: Correct.

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1 Q. The 253-million-dollar cash commutation payment has been
2 heavily negotiated. The parties are at an end to that
3 negotiation. There's no possibility of obtaining a higher cash
4 offer, and the deal is on the table in the context of the
5 overall plan support agreement. So it's the FGIC settlement
6 plus the plan support agreement being presented as a take it or
7 leave it deal. In your view, could the trustees, in good
8 faith, accept that deal?

9 A. I'm still -- no, I think if they -- again, they could
10 always -- and they always have the right, if -- to not accept
11 that. Just because it's the last --

12 THE COURT: Mr. Goldstein?

13 A. -- dollar --

14 THE WITNESS: Yes?

15 THE COURT: I thought the question was pretty clear.
16 Can you answer the question? It's a hypothetical question.
17 Take it or leave it deal.

18 THE WITNESS: And I -- what I'm saying is they could
19 not take it.

20 Q. Well, is it your testimony it's either way? They could
21 either take it or leave it, and there'd be good faith in either
22 direction?

23 THE COURT: The question is --

24 MR. BAIO: Objection to form.

25 THE COURT: -- whether, if they accept it -- a take it

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1 or leave it deal, do you believe that's in good faith?

2 THE WITNESS: Again, the -- a take it or leave it is
3 not always in the --

4 THE COURT: At the end of the negotiation, you get to
5 a point where somebody --

6 THE WITNESS: Right.

7 THE COURT: -- isn't going to raise the price anymore.

8 THE WITNESS: Right.

9 THE COURT: And the trustees -- I take it this is your
10 question, Mr. Bennett.

11 MR. BENNETT: Correct.

12 THE COURT: The trustees are faced with a decision.
13 Take it or not. If they decide to take it, do you believe it's
14 in good faith?

15 THE WITNESS: Okay. I -- it could possibly be, or not
16 because --

17 THE COURT: Okay.

18 THE WITNESS: -- there might be other -- Your Honor, I
19 participate in negotiations all the time. And just because
20 somebody says I'm not going to pay you a dollar more doesn't
21 make it --

22 THE COURT: You were asked a hypothetical --

23 THE WITNESS: -- the right offer.

24 THE COURT: -- question, Mr. Goldstein. Ask your next
25 question.

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1 THE WITNESS: But it doesn't mean it's a reasonable --

2 THE COURT: Mr. Bennett --

3 THE WITNESS: -- answer.

4 THE COURT: -- the witness doesn't want to answer the
5 question, okay?

6 MR. BENNETT: I'm fine with that --

7 THE COURT: And the Court will take --

8 MR. BENNETT: -- Your Honor.

9 THE COURT: -- that into account in evaluating --

10 MR. BENNETT: Certainly.

11 THE COURT: -- his credibility.

12 BY MR. BENNETT:

13 Q. Let's talk about the forty --

14 THE COURT: Ask your next question.

15 MR. BENNETT: Sorry. Sorry, Your Honor.

16 THE COURT: Thank you.

17 Q. Let's talk about the forty-percent haircut.

18 A. Yes.

19 Q. There's -- in your report, there's a criticism of that,
20 correct?

21 A. Yes.

22 Q. And you -- in your understanding of the forty-percent
23 haircut, that was based on a FGIC estimate of unpaid future
24 claims, correct?

25 A. The forty-percent haircut was -- what I saw, as an

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1 additional discount to the discounts already in place in
2 calculating what the payout would have been to security holders
3 at that point. So there was already -- it was a double
4 discount.

5 Q. Not my question. The basis, as you understood it, of the
6 FGIC forty-percent haircut was on an estimate of unpaid future
7 claims, correct?

8 A. I don't have that explanation -- well -- as to what was
9 the forty-percent discount. It's called a haircut. It was
10 called settlement terms. It was called negotiation. I'm not
11 really sure what the overall basis of it was.

12 Q. Sir, take a look at your own expert report. It's tab 3,
13 Exhibit CL.

14 A. Yes.

15 Q. And if you go to page 7 -- a little hard to tell the
16 numbering here, but it's paragraph 18(ii) on the forty percent
17 reduction of future payment, and then you go from page 6 over
18 to page 7, are you there?

19 A. Yes.

20 Q. And it says "The reduction is described in the Duff &
21 Phelps report as a haircut of forty percent on unpaid payout
22 claim estimates," correct, that's what it says?

23 A. Yes.

24 Q. And that was your understanding of what the haircut was
25 for, correct?

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1 A. Those are -- yes, I mean, the unpaid claims they took a
2 reduction off of those claims that have been -- the future
3 claims, yes.

4 Q. And you believe that the potential for additional
5 liabilities to the extent that they would impact cash flows
6 should be factored into an assessment of the rehabilitation
7 plan, correct?

8 MR. BAIIO: Object to the form, I don't understand it.

9 THE COURT: Sustained. Ask your question again, Mr.
10 Bennett. I didn't understand it either.

11 Q. To the extent that additional liabilities, future
12 liabilities, may have an impact on cash flows in your opinion
13 in assessing the rehabilitation plan, the likely results of the
14 rehabilitation plan, that has to be taken into account,
15 correct?

16 MR. BAIIO: Same objection.

17 THE COURT: Overruled.

18 A. The claim levels certainly impact the payout under the
19 plan and it would be effective in the relative sense. That is,
20 depending on which type of claim would be made; whether it's
21 under the municipality claims, or whether it's under the other
22 claims, whatever would be in the mix, it would be a relative
23 impact.

24 Q. Okay. And you are aware that that FGIC insures public
25 finance obligations, correct?

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1 A. I am.

2 Q. And you have an understanding that about thirty percent or
3 more of FGIC's business involves the insurance of public
4 finance, correct?

5 A. I'm aware of that.

6 Q. And you have not studied FGIC's exposures to public
7 financing insurance obligations, correct?

8 A. Only to the extent they're included in their quarterly
9 reports.

10 Q. Well, you have not made an assessment of the likelihood
11 that the Detroit filing will have an impact on FGIC's financial
12 circumstances, correct?

13 A. I have not done an individual study of that.

14 Q. And you have not made any assessment of the likelihood
15 that any other state, county or municipal entities defaulting
16 or filing for bankruptcy might have an effect on FGIC's
17 finances, correct?

18 A. That's true.

19 Q. And you were present in court last week when John Dubel
20 testified, correct?

21 A. I was.

22 Q. And you heard Mr. Dubel testify that FGIC added something
23 in excess of 800 million dollars in loss reserves in a single
24 quarter just this year, correct?

25 A. I heard that, yes.

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1 Q. And you're not in a position to contradict that testimony,
2 are you?

3 A. No, I've heard his testimony.

4 Q. And you have seen the most recent FGIC financial
5 statements, correct?

6 A. I have.

7 Q. And if you go to tab 9, Exhibit 174, I think that's
8 already in evidence.

9 A. I see that.

10 Q. That's a set of financial statements that you have
11 reviewed, correct?

12 A. Well, review is a technical term, I've read them.

13 Q. You've seen them?

14 A. I have seen them.

15 Q. Okay. And you're not in a position to contradict any of
16 the numbers that are included in that set of financial
17 statements, correct?

18 A. I've only read those, sir.

19 Q. You have reviewed the terms of the FGIC rehabilitation
20 plan, correct?

21 A. I have.

22 Q. And you agree that the amount of the upfront payment
23 according to the plan could go up or down from what is
24 estimated in the plan disclosure, correct?

25 A. Yes.

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1 Q. And you recognize that the rehabilitator has discretion to
2 determine the amount of the upfront payment, correct?

3 A. I'm aware of that.

4 Q. And you're aware there's no minimum initial CPP or cash
5 payment under the rehabilitation plan, correct?

6 A. That's true.

7 Q. And you recognize that future cash flows under the
8 rehabilitation plan may extend as long as forty years, correct?

9 A. My understanding is yes, that would be the time frame.

10 Q. And you agree there's no guarantee of the amount of any
11 such future cash flows, correct?

12 A. That is also true.

13 Q. And you have not done any analysis of likely recoveries
14 under the FGIC rehabilitation plan, correct?

15 A. I have not.

16 Q. The only analysis that you have seen unlikely recoveries
17 comes from the Duff & Phelps report, correct?

18 A. Yes, and also the Lazard reports.

19 Q. Okay. Now let's talk about the premium payment.

20 A. Yes.

21 Q. You recognize that as part of the FGIC deal the trusts
22 will not have to pay any future insurance premiums to FGIC,
23 correct?

24 A. That is a term, yes.

25 Q. And you recognize that the nonpayment of the insurance

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1 premiums constitutes value to the trusts and their
2 beneficiaries, correct?

3 A. If you don't have to pay a bill, yes, that would be a
4 benefit.

5 Q. And the present cash value as you understand it, is about
6 18.1 million dollars, correct?

7 A. Yes, that is the number.

8 Q. But you say in your declaration that the trust might
9 already have a right to set off premium payments against a
10 deficiency related to policy claims, is that right?

11 A. Yes.

12 Q. And is that based on your legal analysis of the
13 rehabilitation plan?

14 A. No, it was my assessment or my understanding from speaking
15 with counsel.

16 Q. Okay. And you're not offering the Court a legal opinion
17 on the meaning of the provisions of the rehabilitation plan
18 with regard to setoff, are you?

19 A. I'm not.

20 Q. Isn't it true that the right of setoff under the
21 rehabilitation plan only arises if FGIC does not pay the cash
22 payments, the CPP?

23 MR. BAI0: Object to the form.

24 THE COURT: Overruled.

25 A. My understanding is that if there were unpaid claims that

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1 there was an ability to offset those unpaid amounts versus the
2 premium payment.

3 Q. Right. So you have a plan of rehabilitation, FGIC is
4 supposed to make cash payments pursuant to the plan. If they
5 don't then there's a right of setoff --

6 A. Right.

7 Q. -- correct?

8 A. Yes.

9 Q. That's the only situation where there's a right of setoff,
10 correct?

11 A. To my understanding, yes.

12 Q. Now, your original expert report included reference to
13 potential benefits from FGIC litigation against RMBS organizers
14 like Countrywide, AFI and Credit Suisse, correct?

15 A. Yes.

16 Q. And your opinion originally was that proceeds from such
17 litigation should have been included in determining the
18 potential value of the FGIC rehabilitation plan, correct?

19 A. What my opinion was that there should have been an
20 assessment of those litigation items, that the offer did not
21 include any of those items. That there was a walk away, it was
22 the 253 million dollars and then a no ability to collect on any
23 of the upside based on those litigation items.

24 Q. And your original opinion actually assumed that there was
25 more than one billion dollars of gross recoveries available

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1 from loss mitigation activities that could include litigation
2 claims, correct?

3 A. From loss mitigation which includes litigation. If you
4 look at the report that we were just talking about, the
5 quarterly report, the language in that section describes what
6 potential recoveries are. It could be reinsurance, there could
7 be subrogation claims, and as well, there could be litigation
8 as mentioned here. So it's not just the litigation, it would
9 be any mitigation.

10 Q. I'm talking about your original expert report?

11 A. Yes.

12 Q. You assume there was more than a billion dollars' worth of
13 loss mitigation recoveries that could be in the form of
14 litigation claims, correct?

15 A. Not only in the form of litigation, it's among other
16 things. So litigation, was certainly one of the items that was
17 included, but other recovery actions were also included.

18 Q. And that was based on your reading of the March 2013 FGIC
19 quarterly statement, correct?

20 A. Yes, there was an estimate at that point in that report;
21 the quarterly report.

22 Q. And you recognized now that that assumption actually was
23 an error, correct?

24 A. Well, I certainly have heard some testimony. The one
25 thing I haven't seen is the actual details of -- what's

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1 included in that amount. There was -- Mr. Dubel testified as
2 to, you know, a certain portion of that being reimbursable
3 claims, or reimbursement claims. And, but other than that, I
4 haven't seen any of the detail to know specifically --

5 Q. Okay.

6 A. -- what's in there.

7 Q. Your new declaration, your trial testimony, actually takes
8 that out, correct? You no longer refer to the billion dollars
9 in gross recoveries, correct?

10 A. That is accurate.

11 Q. And that's based on the new information that you got that
12 explained what the quarterly March 2013 statement actually was
13 about, correct?

14 A. No, it was more of a simplification of my presentation.

15 Q. Okay. You do know that John Dubel testified in his direct
16 that that one-billion-dollar recovery actually didn't refer to
17 litigation claims, correct?

18 A. I did hear his testimony. He described approximately 500
19 million of it related to reimbursement claims, of which his
20 further testimony was that they could have no value. So I'm
21 not -- I haven't seen the exact details that make up that
22 amount. So I don't know what's included or not included,
23 whether it has litigation, doesn't have it, whether it's --

24 THE COURT: Why don't you take well enough alone, Mr.
25 Bennett.

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1 MR. BENNETT: Yeah, that's fine.

2 THE COURT: He took it out of his final report, you
3 know.

4 Q. Why don't we get to the assumption about the payout to
5 FGIC absent the settlement deal. You recognize that as part of
6 the FGIC settlement deal FGIC will get an allowed claim in the
7 ResCap bankruptcy which you say will generate about a 206-
8 million-dollar payment, correct?

9 A. Yes.

10 Q. And you state in your declaration that absent the
11 commutation FGIC ResCap policyholders are entitled to receive
12 proceeds from contingent assets, such as litigation recoveries,
13 correct?

14 A. Yes.

15 Q. And you assume that if the ResCap Chapter 11 plan did not
16 become effective the value of the FGIC recovery is uncertain,
17 correct?

18 A. I think it is -- yes, there was no precise number,
19 although I used the number that was in the settlement agreement
20 because it was a negotiated -- heavily negotiated amount, as
21 you've discussed.

22 Q. So you did the same thing that Mr. Gibson did, just assume
23 that the claim could be settled or litigated for that amount,
24 correct?

25 A. Yes, that's right.

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1 Q. And you have not independently made an assessment of
2 FGIC's likelihood of success on any of its claims, correct?

3 A. That's the exact kind of information that I would like to
4 have had. Yes, I haven't done an independent view of it, and
5 that was not available to the trustees either from what I could
6 tell.

7 Q. Well, in fact, as of your deposition you hadn't even
8 reviewed FGIC's proofs of claims in the case, isn't that true?

9 A. I don't recall what that particular question was. I don't
10 recall saying that, but you'll I'm sure point it out to me.

11 Q. Well, why don't we go to your deposition again?

12 A. Yep.

13 Q. Tab 2, page 163, line 14.

14 "Q. So your understanding, though, is that if the FGIC
15 settlement agreement is not approved the FGIC trusts would not
16 have allowed claims at the levels, whatever levels they are at
17 this point, under the proposed ResCap bankruptcy agreement?

18 "A. I have not looked at the proofs of claim that have been
19 filed for that purpose and assess whether there is enough, you
20 know, a positive or a negative to that. So I don't have an
21 opinion."

22 Was that your testimony, sir?

23 A. It was.

24 Q. Now, you agree with regard to discount rates that the
25 purpose of a discount rate is to adjust the value of projected

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1 cash flows to account for risk and uncertainty in financial
2 projections, correct?

3 A. Yes.

4 Q. And you criticized the Duff & Phelps report for failing to
5 provide a build up explanation of the discount rates that they
6 used in calculating future cash payments under the
7 rehabilitation plan, correct?

8 A. Well, the criticism was that I didn't see a basis of it,
9 and I think they assumed the Lazard range that was provided to
10 them.

11 Q. Right. And you have not for your own purposes derived a
12 specific alternative discount rate number of your own, correct?

13 A. I have not.

14 Q. And you were present in court just less than an hour ago
15 when Mr. Gibson testified that a discount rate of ten to twenty
16 percent is a reasonable discount to account for the
17 uncertainties and timing of the cash flows within the FGIC
18 rehabilitation plan. Did you hear him testify to that effect?

19 A. I did hear him say that, yes.

20 Q. And you're not in a position to contradict Mr. Gibson's
21 testimony, are you?

22 A. My criticism is contained in my report as to the discount
23 rates, and the lack of calculations or underlying data
24 supporting that.

25 MR. BENNETT: Nothing further, Your Honor.

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1 THE COURT: Any further cross-examination?

2 Redirect.

3 REDIRECT EXAMINATION

4 BY MR. BAIO:

5 Q. Mr. Goldstein, let's go back to the hypothetical.

6 A. Yes.

7 Q. And as I understood it on the one hand there's a 253-
8 million-dollar commutation policy by FGIC and that's it,
9 they're not going to do anything more, that's their final
10 offer. On the other side there is a rehabilitation plan with
11 all that has been described.

12 A. Right.

13 Q. In your view, if the trustees accept the 253 and reject
14 the rehabilitation plan could that be in good faith on behalf
15 of the trusts?

16 A. No.

17 Q. And why not?

18 A. And if we turn to page 3 of my report it outlines the FGIC
19 proposal versus -- well, just outlines the FGIC proposal and
20 tries to further explain or to identify my disagreements with
21 those amounts, or those amounts that are present. So I think
22 it's probably important to start with the initial cash payment
23 is 253 million dollars in the offer; in the plan it would be
24 136 million dollars as suggested in the FGIC offer, and it's
25 also approximately 150 to 163 million dollars in the Duff &

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1 Phelps analysis; so the initial cash payment is increased.

2 If you roll down the calculation it comes to what amount
3 is being paid to the -- underneath the plan, and it would be
4 the 136 million dollars up front, and then there would be 225
5 million dollars of payments over time that would be already
6 present value. That is, those cash flows are taken back to
7 present value. You'd add those up and it would come out to a
8 total of 362 million. That obviously takes into account, or
9 does not take into account this forty percent haircut that was
10 described, which I still don't believe has any -- has no
11 support from what I can find.

12 In addition, the total value to the trust calculation as
13 everything rolls through is a number that is assumed throughout
14 the -- from the -- or the rehabilitation plan. That number
15 assumes that the -- that the premiums are paid. So, for
16 example, the 271 million dollars even under the proposal is
17 then reduced by the premium payment. If, in fact, that is a
18 benefit that's being described, then the payment wouldn't have
19 to be made. So the 253's already net of a payment of eighteen
20 million dollars. The 271 -- if somebody were to offer the 271
21 and say okay, you get 271 million dollars and you don't have to
22 pay the premium, then you would have that money. But, in fact,
23 you can't call it a benefit if they reduce your present value
24 or the value of the trusts by the payment. It doesn't make any
25 sense; they're reducing it so, in fact, they're having you pay

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1 that amount.

2 I've removed that from the adjusted FGIC proposal to have
3 the 362 million, that is removing the forty percent discount
4 rate, or discounted amount, for future claims, as well as the
5 eighteen million dollars, to arrive at the adjusted proposal.
6 And based on that, based on that number alone, without
7 considering any of the other upsides, upside on the modeling,
8 upside on any of the litigation, or any of the recovery areas,
9 that number is, as we can see, a 109 --

10 THE COURT: What paragraph are you looking at?

11 THE WITNESS: This is in paragraph 5 -- I'm sorry,
12 paragraph 11, but it carries over to page 3.

13 THE COURT: I got it.

14 A. So that these numbers and this difference doesn't include
15 any of those potential upsides. And I think as we've
16 identified, there are a number of items that are there. There
17 are litigation items, material litigation that where the --
18 where FGIC is represented by material firms, like Jones Day,
19 who obviously is not going into litigation frivolously. So all
20 of these actions of Credit Suisse, the Countrywide, and the
21 other litigation with the debtor, are all items that are
22 potential upsides that are completely discounted and not
23 provided. There's no analysis of it, there's no -- and there's
24 even no attempt to come up with a number.

25 But despite all that, and not considering any of that, the

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1 mere adjustments that I place onto the proposal provide a 362-
2 million-dollar payment to the investors.

3 Q. And what about if you also include the settlement that
4 generates 206 million dollars, what does that do in your
5 analysis as to whether the trustees could be acting in good
6 faith by accepting the last offer of 253 million dollars?

7 A. Again, as I stated earlier or was trying to, within that
8 the 206 million dollars is a negotiated amount, and I use that
9 as, again, a proxy, or a number that was arrived at by these
10 competing parties. To say that that number is outlandishly one
11 way or the other I've decided -- or not decided, I've
12 concluded, that seeing that, that the 206 million dollars is an
13 amount to at least consider and present here. And then what
14 I've provided also is what the share of those -- the particular
15 proceeds would be for the investor group.

16 Q. And what is that share?

17 A. 43.4 million dollars.

18 Q. And when you add that to the 361 it's -- what do you get?

19 A. It's a total of 405.3 million dollars.

20 Q. And it is your opinion that that amount is the minimum
21 that could be paid?

22 A. It is a floor, yes.

23 Q. Now, we were asking about good faith. In that
24 hypothetical is there any way that you could see that the
25 trustees could be acting in good faith on behalf of the trusts

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1 by accepting the 253 million dollar take it or leave it number?

2 A. No, I don't believe they could have been acting in good
3 faith at that point.

4 THE COURT: So why didn't you answer the question when
5 you were asked by Mr. Bennett?

6 THE WITNESS: I -- I --

7 THE COURT: All you did was fence and you didn't
8 answer the question.

9 THE WITNESS: That it wasn't in good faith, I'm sorry,
10 Your Honor, I thought he was trying --

11 THE COURT: Go on, Mr. Baio.

12 THE WITNESS: Yep.

13 THE COURT: I don't particularly appreciate it,
14 though, when in cross-examination the witness refuses to answer
15 questions. And then now you stand up there and go through it
16 as if oh, all is sweetness and light. Go on and finish your
17 examination.

18 Q. Let's talk about in a hypothetical without -- with another
19 conclusion, and that is whether the settlement would be in the
20 best interests of the trusts. If it were a take it or leave it
21 offer of 253 million dollars, the alternative being the
22 rehabilitation plan, in your view is it in the best
23 interests -- could it be in the best interests of the trusts to
24 accept the 253 million dollars?

25 A. No.

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1 Q. Let's talk about -- you also were asked about discount
2 rates by the cross-examining attorney, and the forty percent
3 haircut. You heard an explanation of the forty percent haircut
4 that there are claims that would be front-loaded, and
5 therefore, that would justify an additional discount, does that
6 make any sense to you?

7 A. Well, in fact, I believe it's the opposite. Those claims
8 that are incurred in the current time have a higher present
9 value to them, in that the discount rate is applying over a
10 shorter period of time. So if there's a claim made, 17.25 or
11 whatever the number ends up being in the initial payment, will
12 be there, as well as a carry of three percent on the balance
13 that's unpaid. So that those claims would have a higher
14 percentage, higher present value, than the claims that would
15 occur five, ten, fifteen years down the line.

16 Q. And what was your understanding as to the excuse or the
17 basis for the forty percent haircut?

18 A. Well, that somehow -- I think it's a combination of items.
19 That is, there's great risk that there will be further claims
20 and that these particular claims would be further diluted, or
21 diluted in a relative ratio, and therefore, the payments that
22 would go out to these -- the folks that are settling here would
23 be less.

24 Q. And what about the front-ended aspect of it, how does that
25 work as you understand it from the explanation that you

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1 received?

2 A. Again, well, the front -- I don't want to have to repeat
3 myself, but basically those dollars that are received in the
4 current framework or within the current time have a higher
5 present value than dollars that are received at a later period
6 of time.

7 Q. And does that make any sense as a justification for the
8 forty percent haircut?

9 A. I have not heard any explanation for the forty percent
10 haircut.

11 MR. BAIIO: That's all I have, Your Honor, I pass the
12 witness.

13 THE COURT: Any other redirect?

14 Further cross?

15 MR. BENNETT: Nothing further, Your Honor.

16 THE COURT: All right. You're excused, Mr. Goldstein.

17 All right. Before I decide on whether we're going to
18 take the lunch break what other witnesses do the objectors
19 have?

20 MR. BAIIO: Your Honor, we have the exhibits that we
21 want to go through that also we will submit, and the deposition
22 testimony designations.

23 THE COURT: Are there any other live witnesses I'm
24 going to hear?

25 MR. BAIIO: Other than our rebuttal case, Your Honor,

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1 we have no other live witnesses.

2 THE COURT: Rebuttal case?

3 MR. BAIIO: To whatever they're putting on, to what
4 they have put on. We are limited, right, Your Honor, we were
5 not able to ask witnesses --

6 THE COURT: Well, do you have a witness you're calling
7 as part of your case?

8 MR. BAIIO: The affirmative case, or the rebuttal case?

9 THE COURT: The objectors are putting their case on,
10 are there any other witnesses that you're calling as part of
11 your case?

12 MR. BAIIO: Yes, Your Honor, we will call Mr. Sklar,
13 but that will be in the form of rebuttal.

14 THE COURT: No, it won't. You --

15 MR. BAIIO: Okay, then we'll call him.

16 THE COURT: -- can call Mr. Sklar.

17 MR. BAIIO: Okay.

18 THE COURT: They rested, you're putting your case on.
19 I asked whether you have any other witnesses, you want to
20 call -- recall Mr. Sklar. Anybody else?

21 MR. BAIIO: I don't believe so, Your Honor.

22 THE COURT: All right. How long do you anticipate
23 being with Mr. Sklar?

24 MR. BAIIO: No more than fifteen minutes.

25 THE COURT: All right. We're going to take -- all

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1 right, and then what is the status of the designations and
2 counter-designations, Mr. Kerr?

3 MR. KERR: Your Honor, it's my understanding -- I
4 believe, and I believe that these are some open issues between
5 the investor objectors and the trustees.

6 THE COURT: Okay.

7 MR. KERR: I was hoping -- I have to figure out over
8 lunch how to get those resolved, and I think -- I've not been
9 directly involved in it, but I'll find out, Your Honor, and
10 I'll report back to Your Honor.

11 THE COURT: All right. When the objectors rest are
12 there witnesses that the proponents intend to call as part of a
13 rebuttal case?

14 MR. KERR: And, again, Your Honor, I believe Mr. --

15 MR. WYNNE: Wynne, yes.

16 MR. KERR: Mr. Wynne said that there may be a rebuttal
17 witness, and I -- and I just have to check with Mr. -- now that
18 he's heard this, I have to check with him to make sure.

19 THE COURT: Well, check with him now.

20 MR. KERR: I will.

21 MR. WYNNE: Yes, Your Honor. Yes, we'll be calling
22 Mr. Dubel, Your Honor. I would estimate probably fifteen
23 minutes -- ten to fifteen minutes.

24 MR. WEITNAUER: And we'd be calling maybe Dr. Kothari,
25 but certainly Mr. Pfeiffer for rebuttal.

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1 THE COURT: Okay. We can take one hour for lunch.

2 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

3 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

4 THE COURT: It's 12:37, so 1:37 we'll resume.

5 (Recess from 12:37 p.m. until 1:37 p.m.)

6 THE COURT: Please be seated. Court's back in
7 session.

8 Mr. Kerr?

9 MR. KERR: Your Honor, Charles Kerr of Morrison &
10 Foerster, on behalf of the debtor.

11 Just some housekeeping matters if I could, Your Honor?

12 THE COURT: Yes.

13 MR. KERR: During the lunch, we -- several parties
14 worked on getting the designations correct, and I'd like to
15 offer into evidence as Exhibits (sic) 175 the deposition
16 designations and counter-designations for Michael Thayer (ph.).
17 Exhibit 176 are the deposition designations and cross-
18 designations for Adam Sklar. Exhibit 177: the deposition
19 designations and cross-designations for David Williams. And
20 178 are the deposition designations and cross-designations for
21 Gina Healy. And I have copies of those here, Your Honor, if
22 you want me to hand them up to you?

23 THE COURT: Okay, please.

24 Okay, thank you.

25 All right, is everybody in agreement on that?

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1 MR. KERR: I believe so.

2 MS. JAMES: Your Honor, any objections we have, I
3 believe, are listed on those documents we just handed up.

4 MR. GOODMAN: And, Your Honor, Peter Goodman for
5 Freddie Mac. We echo counsel's comments.

6 THE COURT: Well, I want to make sure I understand.
7 So the objections that are shown are being reserved, is that
8 correct?

9 MS. JAMES: That's correct, Your Honor.

10 THE COURT: Okay. All right --

11 MR. KERR: Your Honor, one moment?

12 THE COURT: Sure.

13 MR. KERR: Yes, that's fine, Your Honor. And I --

14 THE COURT: I'm going to read the designations and
15 counter-designations and where there's -- I'm not sure whether
16 I'm going to enter a separate order on the objections or not;
17 I'll see when I read this.

18 MR. KERR: Okay. That's my only housekeeping, Your
19 Honor.

20 THE COURT: All right, so Exhibits 175, -76, -77 and
21 -78 don't come into evidence per se; they're the listing of the
22 designations -- deposition designations and counter-
23 designations and some objections. And the Court will review
24 the testimony and including the objections.

25 All right. Do the objectors -- are they calling

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1 another witness?

2 MR. KERR: Oh. I believe we are, Your Honor.

3 MS. JAMES: Your Honor, we will have designations to
4 offer --

5 THE COURT: I'm sorry, I didn't hear you, Ms. James.

6 MS. JAMES: I'm sorry. We will have designations to
7 offer, Your Honor. We don't have them right now; they'll be
8 available shortly.

9 THE COURT: Okay.

10 MR. CARNEY: Your Honor, we do have designations to
11 offer --

12 THE COURT: Come on up, Mr. Carney.

13 Go ahead, Mr. Carney.

14 MR. CARNEY: Good afternoon, Your Honor. Michael
15 Carney for Freddie Mac.

16 We do have the designations to offer: the
17 designations of Federal Home Loan Mortgage Corporation, the
18 deposition testimony of John Dubel, Robert Major and Lewis
19 Kruger; and the designations of the Federal Home Mortgage --
20 oh, that's the same one -- and the counter-designations of
21 Federal Home Loan Mortgage Corporation, to the testimony of
22 Gina Healy; and --

23 THE COURT: I'm confused. Mr. Kerr has indicated that
24 he was -- that what he gave me included the designations and
25 counter-designations.

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1 MR. KERR: One second, Your Honor. Let me --

2 THE COURT: Yeah, confer.

3 MR. KERR: Let me clarify.

4 (Pause; counsel confer)

5 MR. CARNEY: Your Honor, generally what we've agreed
6 to is we've agreed with the parties that we would -- each party
7 would submit its own designations and counter-designations, and
8 we --

9 THE COURT: No. I want one for each witness. I want
10 a document, a pleading, that indicates the designations,
11 counter-designations and any remaining objections. I'm not
12 going to refer to one document from each of you for the same
13 witness.

14 MR. CARNEY: All right.

15 THE COURT: It's not complicated.

16 MR. CARNEY: We will certainly do that, Your Honor,
17 and apologize for wasting the Court's time.

18 THE COURT: Okay, but you -- the only overlap was
19 Healy. You have -- are there designations and counter-
20 designations through Dubel, Major and Kruger?

21 MR. CARNEY: Yes.

22 THE COURT: Okay.

23 MR. CARNEY: Yes, and we will submit those in the
24 format the Court requested.

25 We would also like to introduce a few exhibits, if

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1 that's all right, or --

2 THE COURT: Offer them now. Go ahead.

3 MR. CARNEY: Okay.

4 MR. KERR: Your Honor --

5 THE COURT: Go ahead, Mr. Kerr.

6 Let me hear --

7 MR. KERR: I'm just trying to understand. I was --
8 with respect to the designations -- let me step back. We sent
9 to the objectors a full list of all the designations and
10 counter-designations for Kruger and we didn't get any response
11 from them. So what I'm assuming is that they're now going to
12 look at that and hopefully agree to that, I guess.

13 THE COURT: I set a -- I think, when I got the McKool
14 Smith letter complaining about disagreement about designations
15 and counter-designations, I required a meet-and-confer and a
16 deadline to get it resolved. There should be -- I should be
17 getting a document that reflects that you've exchanged -- I
18 don't want to hear that you're telling Mr. Kerr for the first
19 time now that you've got counter-designations to depositions.

20 MR. CARNEY: With respect to Mr. Kruger, no, we don't.
21 We agree with what was submitted this morning that he submitted
22 to the Court.

23 MR. KERR: Your Honor, I haven't submitted anything
24 for Mr. Kruger.

25 THE COURT: I know you haven't. Nobody's submitted

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1 anything with respect to Mr. Kruger.

2 MR. CARNEY: Well, let me confer with the parties and
3 maybe we can iron this out. Just give us a second, and I guess
4 we can move on at this point.

5 MS. JAMES: Your Honor, we had submitted counter-
6 designations to Mr. Kruger, designations we received from the
7 debtors.

8 MR. KERR: Your Honor, if I can cut through this. We
9 have a single piece of paper that has Mr. Kruger's -- all
10 Mr. Kruger's designations we got from all the other parties,
11 and the counter-designations that we provided. And I've sent
12 that to everybody and I'm willing to mark that and put that in
13 if that's what makes it easier, but --

14 THE COURT: Well, it's not a question of putting it
15 in. It's --

16 MR. KERR: All right. I just marked it, Your Honor.

17 THE COURT: Okay.

18 MR. KERR: I recognize that.

19 THE COURT: Mr. Shore?

20 MR. SHORE: The only question -- I fully understand
21 what Your Honor wants. The only question is, when we provide
22 the designations, you also want us to highlight the transcripts
23 for each of those witnesses?

24 THE COURT: It would be helpful.

25 MR. SHORE: Okay.

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1 THE COURT: What I had asked for is that the
2 transcripts be marked, color-coded, so I can see -- you know, I
3 pick up a transcript, I start treading it.

4 MR. SHORE: Here's --

5 THE COURT: I read the designations; I read the
6 counter-designations. If there're objections, I'll resolve
7 them.

8 MR. SHORE: Right. Here was the problem: We
9 exchanged designations and counter-designations on the date and
10 filed them on the docket; that's what you have. Then other
11 people started adding other stuff in -- nobody has a master
12 list right now -- of some of the debtors' witnesses. So we'll
13 get that done --

14 THE COURT: Okay.

15 MR. SHORE: -- provide it to Your Honor and get you
16 copies --

17 THE COURT: Thank you.

18 MR. SHORE: -- that are marked.

19 THE COURT: Thank you.

20 MR. CARNEY: And, Your Honor, Michael Carney again.
21 We did submit our designations and counter-designations and,
22 like Mr. Shore said, we will make sure the Court gets --

23 THE COURT: Okay.

24 MR. CARNEY: -- a master list.

25 THE COURT: But you just need to work together, okay?

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1 So I'll get a list and hopefully I will have these transcripts
2 that will be marked to show the designations and counter-
3 designations. I don't want to have to -- all right, that's
4 what I want. It's not complicated.

5 MR. KERR: Your Honor, the debtors will make sure it
6 happens.

7 THE COURT: Thank you, Mr. Kerr.

8 Ms. Eaton, are you calling another witness?

9 MS. EATON: Yes, Your Honor. The objecting parties
10 call Mr. Sklar.

11 THE COURT: Yeah, make a -- can you -- you've already
12 called Mr. Sklar; you put in his direct testimony; he's been
13 cross-examined. For what purposes are you calling Mr. Sklar?

14 MS. EATON: We're calling him as a rebuttal witness,
15 Your Honor.

16 THE COURT: He's not a rebuttal witness. They put
17 their case on; they rested. What are you responding to that is
18 part of the proponents' case that you're calling Mr. Sklar for?
19 You put his testimony in, in direct narrative form; it was
20 admitted without objection. There was limited cross-
21 examination. You did limited redirect. For what purpose are
22 you calling Mr. Sklar now?

23 MS. EATON: To rebut certain aspects of the testimony
24 put in by the proponents, by other witnesses.

25 THE COURT: Okay, I think you have twelve minutes

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1 left.

2 MR. KERR: Your Honor --

3 THE COURT: Mr. Kerr.

4 MR. KERR: -- let me just state my objection to this,
5 for the fact that they have called him, put on his direct.
6 This is not a rebuttal witness; this is just more direct, and I
7 object to it, Your Honor.

8 THE COURT: Okay.

9 You're still under oath, Mr. Sklar.

10 DIRECT EXAMINATION

11 BY MS. EATON:

12 Q. Good afternoon, Mr. Sklar. You heard testimony about
13 approximately ninety-two million dollars in potential
14 recoveries for claims that -- under the ResCap bankruptcy plan,
15 for claims that FGIC has asserted against ResCap; do you
16 remember that?

17 A. Yes.

18 Q. In analyzing whether the FGIC settlement agreement was in
19 your best interest, did you consider those potential
20 recoveries?

21 MR. KERR: Objection, Your Honor. This is -- I don't
22 know what this is being used to rebut. And I --

23 THE COURT: It's sustained. This -- you know, this is
24 a clear subject of what the direct testimony, in writing, was
25 supposed to cover. It's part of your case. The objection is

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1 sustained.

2 If you want to make an offer of proof, go ahead and
3 make an offer of proof.

4 MS. EATON: The offer is that if the witness were to
5 testify, he would testify that they did in fact consider --
6 take into consideration the potential ninety-two million
7 dollars in recoveries under the bankruptcy plan, in respect of
8 claims that FGIC has against ResCap; that those potential
9 recoveries bear no relationship to the proposed commutation of
10 the policies pursuant to the FGIC settlement agreement; that
11 the policies are an asset of -- ultimately an asset of
12 investors in the FGIC-wrapped securities; that --

13 THE COURT: Where's the proof of that? The policies
14 belong to the trust; they're not asset -- do you have any
15 evidence that these policies are assets of the investors?

16 MS. EATON: The policies -- on the face of the
17 policies, it states, Your Honor, that the policies are being
18 held for the benefit of the holders of the securities.

19 THE COURT: Why didn't you include any of this in the
20 direct testimony of Mr. Sklar by declaration?

21 MS. EATON: It wasn't our understanding, Your Honor,
22 that we needed to put in every point in direct.

23 THE COURT: What did you think? You think you were
24 going to sit back and just wait? When I ordered that direct
25 testimony be put in in written declaration form, written

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1 narrative form, do you think you could withhold that which you
2 wished to withhold and just put in that which you thought you
3 might like to put in?

4 MS. EATON: No.

5 THE COURT: This was to avoid any surprise. Why
6 didn't you include what you'd now offer as proof -- as an offer
7 of proof, in the written direct testimony of Mr. Sklar?

8 MS. EATON: Well, no. To answer both of Your Honor's
9 questions, no, we weren't holding back in an effort to surprise
10 anyone, and indeed it shouldn't be a surprise since some of
11 these issues came up during depositions. And secondly, the
12 purpose of putting Mr. Sklar on -- or attempting to put
13 Mr. Sklar on as a rebuttal witness, was to speak to testimony
14 that came up through other witnesses.

15 THE COURT: Mr. Kerr, do you want to be heard?

16 MR. KERR: Your Honor, this is not included in the
17 direct. Ms. Eaton is correct: These issues were all out
18 there. If this was something they wanted to put in through
19 this witness, they should have done it in his direct, which was
20 filed, I believe, on July 31st, 2013, which is after the
21 completion of all the depositions.

22 So if this is something they learned about in the
23 depositions, that should have been in his direct; it was not.
24 We object.

25 THE COURT: Did you learn about it in the depositions,

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1 Ms. Eaton?

2 MS. EATON: Well, in some --

3 THE COURT: Did you learn about it in the depositions?

4 MS. EATON: In some of the depositions, yes --

5 THE COURT: Okay --

6 MS. EATON: -- Your Honor.

7 THE COURT: -- objection's sustained.

8 BY MS. EATON:

9 Q. Mr. Sklar, in their direct testimony, certain of the
10 trustees -- after discovery was completed, certain of the
11 trustees indicated that they considered that the institutional
12 investors had actively participated in the mediation and
13 supported the settlement proposal and that was one of the
14 reasons why they decided to enter into the FGIC settlement
15 agreement --

16 MR. ESPANA: Objection, Your Honor. That is --

17 THE COURT: Let her finish her question.

18 MR. ESPANA: Sorry.

19 Q. Are you aware of that?

20 THE COURT: Are you objecting?

21 MR. ESPANA: Yes.

22 THE COURT: Okay.

23 MR. ESPANA: That was all within information --

24 THE COURT: Overruled.

25 A. Yes, I'm aware of that.

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1 Q. And do you know who the institutional investors are that
2 the trustees were referring to?

3 A. I do.

4 Q. Who are they?

5 A. They're, I believe, twenty-two -- a group of twenty-two
6 institutions that include you; very large money managers.

7 Q. And is this the group that people have been referring to
8 over the past two days of this trial as the Kathy Patrick
9 group, do you know?

10 A. It is.

11 Q. Did you do an analysis of the holdings of the members of
12 the Kathy Patrick group in the FGIC-wrapped trusts?

13 A. I did.

14 MR. KERR: Objection, Your Honor.

15 THE COURT: Overruled.

16 Q. What did your analysis show, Mr. Sklar?

17 A. Based on the publicly available information, looking at
18 the holdings of the Kathy Patrick group, approximately 2.8
19 percent -- only 2.8 percent of their holdings include FGIC-
20 wrapped securities. And when you look -- when you compare what
21 they hold versus the entire FGIC-wrapped universe, it
22 represents only 7.6 percent of the universe versus our holdings
23 represented by the objectors as approximately 23 to 24 percent
24 of that universe.

25 Q. And what conclusion, if any, did you draw from the fact

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1 that the percentage holdings of the Kathy Patrick group and
2 others were different?

3 MR. KERR: Your Honor, I object. This is --

4 THE COURT: Sustained. He's not testifying as an
5 expert.

6 Q. Did you take those facts into consideration in
7 determining -- in reaching your determination that the FGIC
8 settlement agreement was not in your best interests?

9 MR. KERR: Objection, Your Honor.

10 THE COURT: Sustained.

11 Q. Why did you perform that analysis, Mr. Sklar?

12 A. Because I was concerned about the incentives of certain
13 parties in the mediation that were supposedly representing our
14 interests, those incentives being that if the commutation was
15 part of FGIC's compensation, definitionally -- because it's a
16 zero-sum game, you know, effectively are a loss. I was
17 concerned that if a group of RMBS holders didn't have ownership
18 in the FGIC-wrapped securities, that they would be very willing
19 to -- you know, to accept a deal that was inadequate vis-a-vis
20 our -- the FGIC-wrapped securities.

21 Q. And that is because they stood to benefit more from the --

22 A. Exactly. The point --

23 MR. KERR: Objection.

24 THE COURT: Sustained. Leading question.

25 Q. What did that indicate to you, if anything, about the --

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1 their interest in the ResCap bankruptcy plan --

2 MR. KERR: Ob --

3 Q. -- as opposed to the FGIC rehabilitation plan?

4 THE COURT: Sustained.

5 MR. KERR: Objection.

6 Q. What did that indicate to you, Mr. Sklar?

7 THE COURT: Sustained.

8 MR. KERR: Objection.

9 Q. Did you discuss that analysis with anyone?

10 A. I did.

11 Q. And what did you discuss about --

12 THE COURT: Who did you discuss --

13 Q. -- your analysis?

14 THE COURT: -- it with?

15 A. I discussed the analysis with other members of our --

16 of -- others of the objectors.

17 Q. And what did you and the other members of the objectors
18 discuss in that regard?

19 MR. KERR: Objection.

20 THE COURT: Sustained. That's called hearsay.

21 MS. EATON: Pass the witness.

22 THE COURT: Cross-examination? Any cross-examination?

23 MR. KERR: Nothing. Nothing further, Your Honor.

24 THE COURT: All right. You're excused.

25 Do you have any other witnesses, Ms. Eaton?

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1 MS. EATON: No, Your Honor.

2 THE COURT: Do any of the other objectors have
3 witnesses they wish to call?

4 MR. SHORE: No, Your Honor. Chris Shore from White &
5 Case, for the ad hoc group.

6 MR. GOODMAN: No, Your Honor. Peter Goodman on behalf
7 of Freddie Mac.

8 THE COURT: Subject to the Court's consideration of
9 the deposition designations and counter-designation, do the
10 objectors rest?

11 MS. EATON: Well, we have some exhibits that we'd like
12 to move into evidence.

13 THE COURT: Let's get them in now.

14 MR. KERR: Your Honor --

15 THE COURT: Mr. Kerr.

16 MR. KERR: -- just so I can put this on the record, we
17 would move to strike Mr. Sklar's testimony just provided, as
18 impermissible expert testimony.

19 THE COURT: Overruled.

20 MS. EATON: The exhibits we'd like to move into
21 evidence, Your Honor, are the following: Exhibit A, Exhibit C,
22 Exhibit D, Exhibit J, Exhibit U, Exhibit Z, Exhibit AB, Exhibit
23 AC, Exhibit AD, Exhibit AJ, Exhibit AS, Exhibit BB, Exhibit BK,
24 Exhibit BO, Exhibit BP, Exhibit BQ, Exhibit BR, Exhibit BS,
25 Exhibit BT -- I'll pause there. Apparently the incorrect

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1 document behind that exhibit tab was provided to the Court and
2 to the other side that has since been -- as far as I understand
3 it, has since been corrected.

4 MR. KERR: We have the correct version.

5 THE COURT: I don't know if I do, but --

6 MS. EATON: We'll make -- if you don't, Your Honor,
7 we'll make sure that you do.

8 THE COURT: Okay. Go ahead.

9 MS. EATON: -- Exhibit BU, Exhibit BV, Exhibit BW,
10 Exhibit BX, Exhibit BZ, Exhibit CA, Exhibit CH, Exhibit CJ,
11 Exhibit CK, Exhibit CS, Exhibit CV, Exhibit CW, Exhibit CZ,
12 Exhibit DA, Exhibit DB, Exhibit DE, Exhibit DR, Exhibit DS,
13 Exhibit DT, Exhibit DU, Exhibit DV, Exhibit EI, EJ, EL, E --

14 THE COURT: Slow down. Go ahead.

15 MS. EATON: -- EL, EO, Exhibit FM, Exhibit FS, Exhibit
16 FT, Exhibit F --

17 MR. KERR: Is that Exhibit FT as in Tom?

18 MS. EATON: T as in Tom, yes.

19 -- Exhibit FU, Exhibit FV, Exhibit FW, Exhibit FX,
20 Exhibit FY, Exhibit FZ, Exhibit GB, Exhibit GC, Exhibit GD,
21 Exhibit GE, Exhibit GF, Exhibit GI, Exhibit GO, Exhibit GP,
22 Exhibit GQ, Exhibit GR, Exhibit GS, and last but not least,
23 Exhibit GT.

24 THE COURT: Mr. Kerr?

25 MR. KERR: Your Honor, give me one second that I

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1 can --

2 THE COURT: Sure.

3 MR. KERR: -- respond to this.

4 (Pause)

5 MR. KERR: I have objections to a small number of
6 these exhibits.

7 THE COURT: Okay.

8 MR. KERR: Exhibit AC, the form that we received --

9 THE COURT: Why don't you give me the list of them,
10 and then you --

11 MR. KERR: Okay.

12 THE COURT: -- we'll come back --

13 MR. KERR: I think it's AC, DE, DS -- and I suspect
14 DS, Your Honor, was one they tried to move in before; Your
15 Honor excluded it. That's a letter -- that's a November 16,
16 2012 letter.

17 -- and then FM. Those are the exhibits that we're
18 objecting to, Your Honor.

19 (Pause)

20 THE COURT: All right, so tell me what your
21 objections -- start with AC.

22 MR. KERR: Well, AC is a question -- the form of the
23 exhibit, as we received it, is a five-page affirmation of
24 Mr. Shalhoub -- I don't know how to quite pronounce his name
25 correctly -- and it just lists a bunch of exhibits that aren't

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1 part of the exhibit, and I'm not sure why this is going on or
2 what it is meant to be.

3 THE COURT: This is the list of exhibits.

4 MS. EATON: As I understand it, the failure to attach
5 the exhibits was in error. It's --

6 THE COURT: Objection sustained.

7 MR. KERR: And then with respect to DE, Your Honor --

8 THE COURT: Okay, let me find it.

9 (Pause)

10 THE COURT: Go ahead.

11 MR. KERR: DE is a document produced by Monarch; it
12 appear -- it's -- well, it's hearsay to what appears to be some
13 kind of expert report by Monarch. There's no foundation to it,
14 Your Honor. We would object to it.

15 THE COURT: What's the purpose of the offering,
16 Ms. Eaton?

17 MS. EATON: We're submitting it as part of our direct
18 case, Your Honor. It's not an expert report; it was an
19 analysis that people at Monarch did contemporaneously with
20 respect to the terms of the FGIC rehabilitation plan and
21 potential recoveries thereunder.

22 THE COURT: Objection's sustained. No foundation.

23 MR. KERR: Next is -- Your Honor, is Exhibit DS. And
24 I apologize, Your Honor; this was an exhibit that in fact, I
25 believe, Ms. Eaton attempted to put in through a witness, and

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1 I -- my memory's short; I can't remember which witness it was.

2 MS. EATON: I think that it already is in for a
3 limited purpose and that we're not trying to move it for any
4 other purpose.

5 MR. KERR: Your Honor, actually, I believe that DR
6 went in for a limited purpose but DS was kept out.

7 THE COURT: The DS objection is sustained.

8 MR. KERR: Okay. The final one, Your Honor, is
9 Exhibit FM.

10 THE COURT: Hold on.

11 (Pause)

12 THE COURT: Go ahead.

13 MR. KERR: This is the entire deposition transcript
14 of --

15 THE COURT: I don't take deposition transcripts.

16 MR. KERR: Thank you, Your Honor.

17 THE COURT: Mr. Carney, you have --

18 MR. CARNEY: Just six more, Your Honor.

19 It's Michael Carney for Freddie Mac.

20 The additional exhibits we would like to have admitted
21 are E, P, Q, R, AO and AR.

22 UNIDENTIFIED SPEAKER: Can you repeat that?

23 MR. KERR: Yeah, can you just -- I'm sorry, can you
24 say --

25 UNIDENTIFIED SPEAKER: And slow down.

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1 MR. CARNEY: E, P, Q, R, AO and AR.

2 MR. KERR: One second, Your Honor.

3 (Pause)

4 MR. KERR: Your Honor, I can make this easy: We have
5 no objection to those exhibits.

6 THE COURT: All right. Exhibits E, P, Q, R, AO and AR
7 are all admitted in evidence.

8 (Exhibits E, P, Q, R, AO and AR were hereby received into
9 evidence as Opposing Parties' exhibits, as of this date.)

10 THE COURT: Exhibits A, C, D, J, U, Z, AB, AD, AJ, AS,
11 BB, BK, BO, BP, BQ, BR, BS, BT, BU, BV, BW, BX, BZ, CA, CH, CJ,
12 CK, CS, CV, CW, CZ, DA, DB, DR, DT, DU, DV, EI, EJ, EL, EO, FS,
13 FT, FU, FV, FW, FX, FY, FZ, GB, GC, GD, GE, GF, GI, GO, GP, GQ,
14 GR, GS and GT are all admitted in evidence as well.

15 (Exhibits A, C, D, J, U, Z, AB, AD, AJ, AS, BB, BK, BO, BP, BQ,
16 BR, BS, BT, BU, BV, BW, BX, BZ, CA, CH, CJ, CK, CS, CV, CW, CZ,
17 DA, DB, DR, DT, DU, DV, EI, EJ, EL, EO, FS, FT, FU, FV, FW, FX,
18 FY, FZ, GB, GC, GD, GE, GF, GI, GO, GP, GQ, GR, GS and GT were
19 hereby received into evidence as Opposing Parties' exhibits, as
20 of this date.)

21 THE COURT: Mr. Shore?

22 MR. SHORE: I have one document, Your Honor, that's
23 not on the --

24 THE COURT: Okay.

25 MR. SHORE: -- the list. If I may approach?

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1 Your Honor may recall an issue arose, during
2 Mr. Kruger's deposition, in the entry of three exhibits -- 54,
3 55 and 56 -- where which the Lipps declarations that were filed
4 in the RMBS litigation. We had originally -- or I thought we
5 had agreed that they were just coming in for judicial notice,
6 and then Mr. Kruger had testimony elicited that he relied upon
7 these in agreeing to enter into the settlement agreement.

8 What's been pre-marked as Exhibit HZ are the debtors'
9 responses and objections to the ad hoc group's document
10 requests served in this contested matter. And Exhibit -- or
11 request number one of two asked for all documents reviewed by
12 the CEO in connection with any debtors' consideration,
13 essentially to enter into the settlement agreement is how the
14 debtors interpreted that.

15 I'm offering this document into evidence. I believe
16 Mr. Kerr has agreed to it going into evidence. I'll also,
17 rather than burden the Court with the record of all the
18 documents that were produced, represent to the Court, on the
19 record, that the Lipps declarations -- Exhibits 54, 55 and
20 56 -- were not in the production by the debtors. And I believe
21 Mr. Kerr is willing to accept that representation to the Court
22 as well.

23 THE COURT: Mr. Kerr?

24 MR. KERR: I will accept that representation.

25 THE COURT: All right, so Exhibit HZ is in evidence.

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1 (Debtors' responses and objections to the ad hoc group's
2 document requests served in this contested matter were hereby
3 received into evidence as Objecting Parties' Exhibit HZ, as of
4 this date.)

5 THE COURT: Any other object -- do the objectors rest?

6 MR. SHORE: Yes, Your Honor.

7 MR. GOODMAN: Yes, Your Honor.

8 UNIDENTIFIED SPEAKER: Yes, Your Honor.

9 THE COURT: All right, objectors rest.

10 Mr. Kerr, any rebuttal?

11 MR. KERR: One second, Your Honor.

12 Your Honor, we call Mr. Pfeiffer back up for rebuttal.

13 THE COURT: Okay. Mr. Pfeiffer, why don't you come on
14 back up.

15 Mr. Pfeiffer, you're still under oath.

16 Mr. Weitnauer?

17 MR. WEITNAUER: Thank you, Your Honor. For the
18 record, Kit Weitnauer.

19 DIRECT EXAMINATION

20 BY MR. WEITNAUER:

21 Q. Mr. Pfeiffer, were you present in the courtroom when
22 Mr. Goldstein gave his testimony?

23 MR. BAIIO: Objection, Your Honor. This is the same --
24 this is going to be --

25 THE COURT: Overruled.

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1 MR. BAIO: Okay.

2 A. I was.

3 Q. Okay. And do you recall some testimony by him about
4 whether or not the 18.1 million dollars in premiums should be
5 added to the value of the commutation payment or not?

6 MR. BAIO: Same objection, Your Honor.

7 THE COURT: Overruled.

8 A. I do.

9 Q. Can you explain how Duff analyzed it as compared to what
10 Mr. Goldstein was explaining on the stand?

11 A. Sure. I think it's relatively simple. The commutation
12 agreement provides for a payment upfront of 253.3 million and,
13 in addition, there's the waiving of premiums that have a
14 present value of 18 million, and a nominal value of the
15 premiums are significantly higher than 18 million. Those
16 premiums, absent the commutation agreement, would have to be
17 paid by the trusts; and now due to the commutation agreement,
18 they do not have to be paid. And therefore the value resulting
19 from the commutation agreement equals the 253.3 plus the
20 present value of the waived premiums, and any other benefits
21 that the trusts are going to realize as a result of the
22 commutation agreement.

23 Q. All right, I want to direct your attention to
24 Mr. Goldstein's testimony towards the end of his time on the
25 stand, about frontloaded claims and how frontloading impacts

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1 the value of payments to those claims. Do you recall that
2 testimony?

3 A. I do.

4 Q. Can you explain, in the context of the FGIC plan of
5 rehabilitation, what it means if a policyholder has a
6 frontloaded claim versus one that is not frontloaded?

7 A. What it means, to be very clear, is that certain
8 policyholders accrue their claims early on: Either they've
9 already been accrued and unpaid or they will accrue in the
10 beginning of the forty-year period, they will accrue over the
11 next years. And then there are other claimants who will not
12 make their claims until several years or many years out. So
13 the frontloading refers to the fact that the claims are many
14 years -- in some instances, many years prior to the actual
15 payments.

16 Q. Okay. And how far into the future can claims arise for
17 the first time and be asserted against FGIC in its plan of
18 rehabilitation?

19 A. Can you repeat the question, please?

20 Q. Yes. Well, let me start another way. How long does the
21 FGIC plan of rehabilitation extend for?

22 A. For forty years.

23 Q. And can claims come into existence and be asserted during
24 that whole period, by policyholders?

25 A. Claims can be made throughout the forty-year period, and

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1 many of the payments are not made till the very end of that
2 forty-year period. As a matter of fact, if you look at the
3 CPP, in the base case the CPP goes up marketably (sic) in the
4 last few years. One who claims -- who makes a claim in the
5 early years has to wait a very long time -- in this case, in
6 this example, forty years -- to receive those payments.

7 Q. And what about someone who has a claim that doesn't arise
8 until, say, thirty-five years from today?

9 A. So that's what I wanted to certainly make sure is clear is
10 that there is a significant difference between a claim that is
11 made today and paid over forty years, versus a claim that's not
12 made for a long period of time and then paid in the few year --
13 in the years after that.

14 It's -- to be very clear, it's a time-value-of-money
15 issue, irrespective of what discount rate you use. You
16 simply -- the longer you have to wait to receive payment on
17 your claim, the less value there is to the payment when it's
18 made relative to the claim. So if you have a dollar claim
19 today and you have to wait twenty years for it to be paid, then
20 on a present-value basis you've received much less than if you
21 have to wait only one year or two years.

22 If ResCap -- ResCap -- FGIC -- ResCap-sponsored FGIC-
23 insured trusts have most of their claims already made, and they
24 have to wait a long period of time. The present value of those
25 payments is much less than the present value of those payments

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1 if they would have made the claim in year forty, for example;
2 they would get the payment right away. There'd be very little
3 difference, if no difference, between the nominal amount and
4 the present-value amount.

5 Q. And so did Duff analyze the nature of the claims of the
6 forty-seven FGIC-wrapped trusts, whether they were frontloaded
7 or backloaded?

8 A. We did, and it's referenced in my direct testimony. The
9 claims in these forty-seven trusts are significantly
10 frontloaded to the extent that approximately eighty percent of
11 the claims will have been made, you know, at the end of the
12 first period. And the average claims are well, well beyond
13 that.

14 So therefore, you would expect that on a present-value
15 basis -- again, irrespective of what discount rate you use, on
16 a present-value basis, whereas the average claimant, based on
17 the base case, might receive twenty-seven cents, twenty-eight
18 cents, twenty-nine, thirty cents on the dollar, because our
19 claims are all -- are frontloaded, we would expect that our --
20 on a present-value basis, the forty-seven trusts would receive
21 markedly less than that.

22 Q. All right. And when you say "the first period", what did
23 you mean when you said the claims of these trusts arise in the
24 first period?

25 A. I mean that -- I don't have the numbers in front of me,

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1 but somewhere between sixty-five and seventy percent of the
2 claims have already accrued and been unpaid. And if you look
3 at the first five-year period, the great majority of the
4 additional claims will accrue in that period of time.

5 Q. And that's how FGIC demarcated their periods: five years
6 over the -- five-year periods over the forty years?

7 A. In five-year buckets over forty years --

8 Q. Okay.

9 A. -- correct.

10 Q. All right. And --

11 A. So the --

12 Q. -- when you're referring -- finish.

13 A. No, I'm just saying, so on average, the nominal payout is
14 forty-five cents in the base case. There's a CPP of, what,
15 38.6 at the end, but on average, on a present-value basis, the
16 average policyholder -- or the average claimant will receive,
17 according to the base case -- it's not a certainty, but is
18 expected to receive twenty-seven to thirty cents in FGIC's
19 plan.

20 But it is not contemplated in the plan, based on the
21 timing of our claims of the forty-seven ResCap-sponsored
22 trusts -- it has never been -- never been contemplated, and
23 it's not contemplated based on our analysis, that they would
24 receive twenty-seven to thirty cents. They would receive
25 significantly less because their claims are frontloaded.

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1 Q. Thank you.

2 THE COURT: Over what period of time would the ResCap
3 trusts receive the twenty-seven to thirty cents?

4 THE WITNESS: That's a good question. They're not --
5 they're never going to receive twenty-seven to thirty cents.
6 Twenty-seven to thirty cents is an estimate on a present-value
7 basis as to what the claimants on average will receive. But
8 depending on the timing of the claimants, some claimants will
9 receive fifteen cents, some will receive twenty, some twenty-
10 five, some thirty, some forty. It really depends on the timing
11 of your claims relative to your payments.

12 Everybody's receiving the same on a nominal basis;
13 that's where the "fair and equitable" comes in. Everybody's
14 receiving the same nominal dollars out of the plan, but they're
15 not receiving the same amount of present-value basis. That was
16 the important part of our analysis: to model out the claims on
17 an annual basis over a forty-year period relative to the
18 payments that may come out of the plan.

19 THE COURT: Thank you.

20 MR. WEITNAUER: No, nothing further. Thank you.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION

23 BY MR. BAIO:

24 Q. Mr. Pfeiffer, Joe Baio again.

25 If I understand your testimony, the trusts -- the forty-

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1 seven trusts have frontloaded claims, and that is that, I think
2 you said, sixty-five to seventy percent have been accrued and
3 unpaid already or within the first period; is that accurate?

4 A. I said that sixty-five to seventy percent are accrued and
5 unpaid as of now.

6 Q. Yes?

7 A. And if you take the first five-year period, it's eighty
8 percent approximately, or more.

9 Q. Now, once the claim is accrued and unpaid, there is no
10 vagary about whether it will be a claim in ten years or fifteen
11 years or twenty years; it is a claim today, it's in an amount
12 certain, it's accrued and it's unpaid; correct?

13 A. Okay.

14 Q. And is it your understanding, under the rehabilitation
15 plan, that that amount, whatever it is -- and for these trusts
16 it's largely already established -- that there will be a three-
17 percent rate of return on that? Do you understand that?

18 A. The DPO allows for a three-percent rate of return on the
19 investment -- on the invested -- on the invested amount.

20 Q. So that the forty-seven trusts have -- at least a vast
21 majority of their claims will be effectively fixed, without the
22 vagaries of what will happen in the future. I realize they
23 will collect over time, but certainly that is an advantage
24 compared to those who do not have an accrued and established
25 unpaid claim. The other claims that you are referring to arise

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1 ten years out, fifteen years out, twenty years out, and you
2 would agree with me that the further out you go, the more
3 uncertain it is that they will recover; is that fair?

4 A. What you said is totally confused, because there is -- if
5 you have a certain claim but you're not going to get paid for a
6 while, therefore -- that is what we're looking at here: how
7 quickly will I get paid relative to the claim amount. I've got
8 a -- I have a claim already, accrued and unpaid, of 800 million
9 dollars or so. If I'm not getting paid out for a while, I'll
10 take my dollars today. But if I'm not going to claim -- if --
11 the loss on a claim, therefore, will not be made even for forty
12 years, for example. It may or may not be made, but I don't
13 need to get dollars today.

14 You can almost see what happens. In forty years I'll make
15 a claim and then I'll get paid out within one day? That's a
16 great -- then I'll wait for that deal; that's a good deal,
17 meaning you're not -- you're -- we're not talking about the
18 certainty related to the claim; we're talking about the
19 certainty related to the cash flows --

20 THE COURT: Yes.

21 A. -- the discount related to the timing of the cash flows,
22 the projected payments from the FGIC rehabilitation plan.

23 Q. But if you were using a ten- or twenty-percent discount
24 rate for claims that are going to be made in forty years, the
25 present value of that is close to zero, correct?

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1 A. That's where you're misunderstanding.

2 Q. But is that right --

3 A. No. No.

4 Q. -- that sentence?

5 A. It's not a ten- to twenty-percent on the claim. The
6 twenty-percent or ten-percent discount rate is on the projected
7 payments.

8 Q. But what about the forty percent haircut?

9 THE COURT: Could you let him finish his answer?

10 MR. BAIIO: Sorry, Your Honor.

11 A. It's on the projected payments. The claims don't get
12 discounted; only the payments do.

13 Q. And what about the forty-percent discount? It's supposed
14 to be accounting for this phenomenon --

15 MR. KERR: Objection.

16 Q. -- that there are front --

17 THE COURT: Let him finish his question.

18 Q. -- that there are frontend-loaded payments, due to the
19 forty-seven trusts, isn't that correct?

20 MR. KERR: Objection.

21 THE COURT: Sustained. Ask -- you can -- I'm not
22 precluding you from going to the substance of your question;
23 it's the form of your question.

24 MR. BAIIO: All right, Your Honor.

25 Q. This frontend-loading aspect that you were testifying

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1 about, that's one of the -- that is the justification that was
2 presented to you by FGIC to provide a forty-percent haircut,
3 correct?

4 A. It's one of the justifications, yes.

5 Q. Okay. And these claims actually that have been accrued
6 and unpaid are going to be paid before claims that arise later,
7 correct?

8 A. No.

9 Q. So you believe that the claims that are accrued and unpaid
10 will be -- will not be paid before claims that arise maybe
11 forty years later? That is, the trusts will not get a dime or
12 any increased value before the claim that's made in forty
13 years?

14 A. Obviously, if the claim doesn't exist, there'll be no
15 payment. But there's no -- you don't get payments today or in
16 ten years based on when the claimant -- claim arised (sic).
17 The only factor is, you know, what claims exist, and everybody
18 gets their pro rata portion.

19 Q. But the claims that don't exist aren't included in the pro
20 rata portion at the time of the distribution. A claim that
21 will arise in ten or twenty or thirty years will only be paid
22 later, while the claims that have already accrued and been
23 unpaid will be paid sooner, yes?

24 A. I think I made very clear that the --

25 MR. BAIO: Your Honor, can I get an answer to that

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1 one?

2 THE COURT: I think you're getting an answer,

3 Mr. Baio. You asked a question and let's hear the answer.

4 A. The claims that are made that are as of today will be paid
5 as an initial CPP, which is seventeen and a quarter percent;
6 that's subject to change. It may actually very well change as
7 a result of the additional reserves that we read about last
8 week, but that amount is the only initial CPP that's paid based
9 on today's claims. All subsequent claims are paid pro rata
10 irrespective of when the claim came in.

11 THE COURT: Well, when --

12 Q. But the --

13 THE COURT: Let me stop -- so after the initial
14 payment, when are the next payments made?

15 THE WITNESS: The next payments are made on an annual
16 basis, at a clip of seventeen and a quarter percent. And the
17 CPP can be reevaluated, but they're paid annually based on the
18 amount of claims in the pool at that period of time.

19 THE COURT: As the claims that exist annually?

20 THE WITNESS: Right.

21 THE COURT: Okay. Go ahead, Mr. Baio.

22 MR. BAIIO: Thank you, Your Honor. I have no further
23 questions.

24 THE COURT: All right. Mr. Weitnauer?

25 MR. WEITNAUER: Nothing further, Your Honor.

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1 THE COURT: You're excused, Mr. Pfeiffer.

2 THE WITNESS: Thank you.

3 MR. WYNNE: Your Honor, we're -- Richard Wynne for
4 FGIC. Your Honor, we're going to call Mr. Dubel back to the
5 stand.

6 THE COURT: All right, Mr. Dubel?

7 You're still under oath, Mr. Dubel, okay?

8 THE WITNESS: Yes.

9 THE COURT: Thank you very much.

10 MR. KERR: Your Honor, just so that we can gauge our
11 time, it's my understanding that the objectors are out of time.

12 THE COURT: Yeah, I'll see when -- the proponents
13 called nine witnesses; the proponents called nine witnesses;
14 the objectors called five. You had three experts; they had two
15 experts. I will -- as far as I'm concerned, their time is up.
16 I may permit them further examination. So let's -- Mr. Wynne,
17 go ahead.

18 MR. WYNNE: Thank you, Your Honor.

19 Mr. Dubel, we have some binders that we'll be passing
20 out.

21 THE WITNESS: Thank you.

22 THE COURT: This is a different binder than the one I
23 got earlier.

24 MR. WYNNE: It's a rebuttal binder --

25 THE COURT: Okay.

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1 MR. WYNNE: -- Your Honor, but we're --

2 THE COURT: All right.

3 MR. WYNNE: -- we're actually not intending on using
4 all the documents --

5 THE COURT: Go ahead.

6 MR. WYNNE: -- in it.

7 THE COURT: Go ahead, Mr. Wynne.

8 DIRECT EXAMINATION

9 BY MR. WYNNE:

10 Q. Mr. Dubel, you were present in court, I believe, when
11 Ms. Healy, the Freddie Mac representative, testified?

12 A. I was.

13 Q. And you heard her testimony that, to her knowledge,
14 neither FGIC or the rehabilitator had commuted or terminated
15 any RMBS policies during FGIC's rehabilitation?

16 A. I did.

17 Q. Could you describe how many asset categories FGIC has
18 issued insurance for?

19 A. Yes. We've insured basic -- four basic categories:
20 credit default swaps; public finance; other structured finance;
21 and RMBS.

22 Q. Could you briefly describe each category, very briefly?

23 A. Yes. Credit default swaps are just that. Public finance
24 are bonds or securities issued by municipalities, states'
25 governments, local governments, et cetera. Other structured

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1 may be other commercial transactions that were put in a
2 structured finance format. And then RMBS would be anything
3 related to RMBS securitizations.

4 Q. How familiar are you with FGIC's rehabilitation
5 proceeding?

6 MR. BAIO: Objection.

7 THE COURT: Overruled.

8 MR. BAIO: This could all be in direct.

9 THE COURT: Overruled.

10 A. I am very familiar, as the CEO of FGIC.

11 Q. During the rehabilitation proceeding, what types of
12 policies were commuted or terminated?

13 A. We commuted CDS -- the credit default swaps -- policies,
14 we commuted RMBS policies, and also a public-finance policy.

15 Q. Can you describe the public-finance policy that you
16 commuted?

17 A. Yes. There was a policy that had exposure of about 1.4
18 billion dollars; it was a hospital in Australia that we
19 commuted and terminated.

20 Q. So FGIC -- does FGIC have any remaining exposure on that
21 policy?

22 A. No, it does not.

23 Q. Were any RMBS-related policies commuted during the
24 rehabilitation?

25 A. Yes. We did two of them.

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1 Q. Could you describe them?

2 A. Yes. One was called Aardvark; I think it's been
3 referenced earlier in the testimony. And the other one was
4 related to a confidential policyholder; I'll refer to it as
5 Contract M right now.

6 Q. Could you describe when these policies were commuted?

7 A. Yes. The Aardvark RMBS transaction was commuted in
8 November of 2012, and the Contract M RMBS transaction was
9 commuted in June of this year.

10 Q. Did FGIC or the rehabilitator provide any public
11 information or notice with respect to these two specific RMBS
12 commutations?

13 A. Yes. When the order was signed by Justice Ling-Cohan on
14 those two particular transactions -- in fact, on all of the
15 commutations that FGIC did during the rehabilitation period,
16 the order was posted up on FGIC -- www.fgicrehabilitation.com,
17 which is a Web site hosted by Garden City Group, which is a
18 well-known docketing clerical service.

19 Q. Was there any other notice provided?

20 A. Yes. As it related to all of these transactions, notice
21 was given to the steering committee and its counsel Bingham
22 McCutchen, and also to McKool Smith --

23 Q. I'd like to --

24 A. -- on behalf of Freddie Mac.

25 Q. Mr. Dubel, I'd like to direct your attention to tab 5 in

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1 the binder that's in front of you; it's Exhibit number 318;
2 previously been marked. Do you recognize this exhibit?

3 A. I do.

4 Q. Could you describe it for the Court, please?

5 A. It is an e-mail which is a notice provided by Dana
6 Kaufman -- who is an attorney at the Weil Gotshal firm, counsel
7 for the rehabilitator and FGIC -- provided to John Briody at
8 McKool Smith; it was sent on Wednesday, November 7th of 2012,
9 and there were multiple parties copied on it, including
10 Mr. Goodman and Mr. Holtzer and others. And it's noted
11 "NYLB" --

12 MR. GOODMAN: Your Honor?

13 A. -- "FGIC termination agreement filing".

14 MR. GOODMAN: I mean, I'm going to object to this line
15 of questioning. Ms. Healy did not deny that she received the
16 proposal that's reflected in Exhibit number 5. That was -- he
17 had the chance to explain these transactions on direct --

18 THE COURT: Overruled.

19 A. And there's an attachment, which is the Aardvark -- a PDF
20 of the Aardvark agreement.

21 Q. At the time that this was sent, did you know that this was
22 being sent?

23 A. Yes, I did.

24 Q. Was this the regular practice, as you understood it, that
25 notices of this type were sent to counsel for both Freddie Mac

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1 and counsel for the --

2 MR. GOODMAN: Objection.

3 Q. -- steering-committee group?

4 THE COURT: Overruled.

5 Go ahead.

6 A. Yes, it is.

7 Q. And the Aardvark transaction that is the subject of this
8 notice, that is related to RMBS products?

9 A. Yes, it is.

10 Q. Mr. Dubel, I'd like to --

11 MR. WYNNE: I'd like to move, Your Honor, Exhibit 318
12 into evidence.

13 THE COURT: Hearing no objections, it's --

14 MR. GOODMAN: No, Your Honor.

15 THE COURT: It's in evidence.

16 (11/7/12 e-mail notice by Dana Kaufman, entitled "NYLB FGIC
17 termination agreement filing", was hereby received into
18 evidence as Exhibit 318, as of this date.)

19 Q. Mr. Dubel, I'd like to show you -- if you'd turn to tab 6,
20 Exhibit 317. Do you recognize this exhibit --

21 A. I --

22 Q. -- this document?

23 A. I do.

24 Q. Could you briefly describe this document?

25 A. Yes. This is an e-mail notice; in this case it was sent

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1 both to the Bingham McCutchen firm, Mr. Horwich, along with the
2 McKool Smith firm, and multiple other parties were attached to
3 it. It's referenced "FGIC filing". It was sent from the same
4 person, Ms. Kaufman, and it's dated June 18th of 2013. The
5 attachment, which the Court will see is redacted here, relates
6 to Contract M; the actual name was included on the e-mail. And
7 it sends over a copy of the affirmation, all the supporting
8 termination agreements related to the Contract M RMBS
9 commutation.

10 Q. The -- is this the Contract -- this is the Contract M that
11 you referred to before?

12 A. Yes, it is.

13 Q. And Contract M, did that also relate to an RMBS policy?

14 A. Yes, it did. Had RMBS assets in it, yes.

15 MR. WYNNE: Your Honor, I'd like to move Exhibit 317
16 into evidence as well.

17 THE COURT: It's in evidence.

18 (6/18/13 e-mail notice by Dana Kaufman, entitled "FGIC filing",
19 was hereby received into evidence as Exhibit 317, as of this
20 date.)

21 MR. WYNNE: Thank you.

22 Q. Mr. Dubel, were there any other public disclosures
23 concerning that there were commutations of RMBS-related
24 policies, to your knowledge?

25 A. Yes. There were multiple --

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1 MR. GOODMAN: Objection, Your Honor.

2 THE COURT: Overruled.

3 A. Yes. There were multiple disclosures in our financial
4 statements, both in our statutory -- what's referred to as the
5 yellow book, but also in our statutory quarterly and year-end
6 financial statements for 2012.

7 Q. Mr. Dubel, could you turn to Exhibit -- tab 3, which is
8 Exhibit 316, and describe for me what that exhibit is?

9 A. Yes. This is our quarterly statement that's required to
10 be filed with the NAIC; it's commonly referred to as the yellow
11 book because it has a yellow cover on it. And it's the -- it
12 represents the quarterly statement for September 30th of 2012.

13 Q. Do you know when that document was filed publicly?

14 A. It was filed on or about December 17th of 2012, within a
15 day of that date.

16 Q. And, Mr. Dubel, are these -- when you say they're filed,
17 how are these statements publicly available, if you know?

18 A. Yes, this statement is filed with the NAIC -- National
19 Association of Insurance Commissioners -- which is a public
20 database that anyone around the country can get access to. But
21 within a day of filing this, FGIC also posted it up on its Web
22 page, under the Investor Relations Financial Reports section,
23 and so it's available even now.

24 Q. Is there a disclosure, in this Exhibit 316, with respect
25 to the commutation of RMBS policies, Mr. Dubel?

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1 A. Yes, there is.

2 Q. Could you point it out to the Court?

3 A. Yes, it's on -- I'll have to be careful here. It's on
4 page 6.19, but at the very bottom I believe it says "Exhibit
5 316, page 25 of 55".

6 Q. And where on that page?

7 A. It's in note 25, "change in incurred losses and loss
8 adjustment expenses", the first paragraph. The -- about
9 halfway down in the paragraph, there's a sentence that starts,
10 "The decrease in projected claims for RMBS backed by first-
11 lien" -- "backed by first-lien mortgage loans reflects the
12 completion of policy terminations in November 2012, with no
13 payment by FGIC."

14 Q. Do you know what that sentence is referring to, which
15 transaction, Mr. Dubel?

16 A. Yes. The only RMBS transaction that we did during that
17 period, which is the Aardvark transaction that I referred to
18 earlier.

19 MR. WYNNE: Your Honor, I'd like to move Exhibit 316
20 into evidence at this time.

21 THE COURT: Any objections?

22 MR. GOODMAN: No objection, Your Honor.

23 MR. KERR: No, Your Honor.

24 THE COURT: Exhibit 316 is in evidence.

25 (FGIC quarterly statement for 9/30/12 was hereby received into

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1 evidence as Exhibit 316, as of this date.)

2 Q. Mr. Dubel, are you familiar with the FGIC plan of
3 rehabilitation?

4 A. I am.

5 Q. I believe that you have also in front of you Exhibit 238,
6 which is --

7 MR. WYNNE: It's not in the binder, but we have it
8 loose, Your Honor.

9 UNIDENTIFIED SPEAKER: It's already in.

10 MR. WYNNE: Exhibit 238 is already in.

11 Q. Mr. Dubel, are there any provisions of the FGIC
12 rehabilitation plan that discuss settlement or commutation of
13 RMBS policies?

14 MR. GOODMAN: Your Honor, I object. This was clearly
15 covered on day one.

16 THE COURT: This is rebuttal. Overruled.

17 MR. GOODMAN: Okay.

18 A. I'm sorry, could you repeat the question, please?

19 Q. Are there any provisions of the FGIC rehabilitation plan
20 that discuss settlements or commutations -- I'll start -- well,
21 first, generally?

22 A. Yes.

23 Q. Can you describe those?

24 A. In section 4.8, which I believe is --

25 THE COURT: 25 of 73?

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1 THE WITNESS: Yes, Your Honor.

2 A. It's "Alternative resolution of claims".

3 Q. Are there any limitations that -- to your knowledge, in
4 the plan, that limit FGIC's ability with respect to commuting
5 any type of policies?

6 MR. GOODMAN: Object to the form. Legal conclusion.

7 THE COURT: Sustained.

8 MR. WYNNE: Mr. Dubel testified that he's very
9 familiar with it. He's the CEO of FGIC.

10 THE COURT: All right, ask your question.

11 Q. Are there any provisions that you're aware of in the plan,
12 that restrict or limit FGIC's ability to commute any specific
13 type of policies?

14 A. No specific types of policies. We have the ability to
15 commute, settle, terminate any of our policies, just subject to
16 the two provisions -- A and B -- in 4.8.

17 Q. When was this plan filed?

18 A. This plan was filed on June 4th of 2013.

19 Q. Are you aware if there were any prior versions of this
20 plan filed?

21 A. Yes. There were several other versions filed.

22 Q. Do you know -- if you know, did --

23 THE COURT: Tell me how come it's got a file stamp of
24 June 13th rather than June 4th.

25 THE WITNESS: Your Honor, I believe this is the order

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1 being entered, as opposed to the plan being filed.

2 THE COURT: Okay.

3 THE WITNESS: The order was entered on --

4 THE COURT: All right.

5 THE WITNESS: -- or about the 13th.

6 THE COURT: Thank you.

7 Q. Do you know if Section 4.8 changed from the other plans
8 that were filed to this final version?

9 A. The first plan that was filed by the rehabilitator was
10 filed in September of 2012. There were two or three other
11 version of this plan that were filed. This is the first
12 amended plan. And this section, 4.8, has not changed at all
13 since the original plan was filed on September -- in September
14 of 2012.

15 Q. When the FGIC settlement agreement was signed that is the
16 subject of today's hearing was the rehabilitation plan
17 effective?

18 A. It was not.

19 Q. Do you have any understanding of what authority the
20 rehabilitator had to commute policies prior to the plan
21 becoming effective?

22 MR. BAIIO: Objection.

23 MR. GOODMAN: Same objection, Your Honor.

24 THE COURT: Overruled.

25 A. I do.

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1 Q. Can you tell us what your understanding is?

2 A. Yes. On June 28th of 2012 Judge Ling-Cohan issued the
3 order of rehabilitation that put FGIC in rehabilitation and
4 appointed the Superintendent, New York State Department of
5 Financial Services, as the rehabilitator, and his authority was
6 vested in that specifically in two areas, one that said they --
7 he was required to remove the causes of the rehabilitation, and
8 the other area that authorized him to run FGIC in the ordinary
9 course as he saw it was appropriate, subject to certain things
10 that would go in front of the Court.

11 Q. Is it your understanding that the rehabilitator acted
12 under the authority granted in that order with respect to all
13 of the commutations that FGIC did during the rehabilitation?

14 MR. GOODMAN: Objection.

15 Q. Do you have an understanding?

16 A. I do.

17 Q. What is your understanding?

18 MR. GOODMAN: Objection.

19 THE COURT: Overruled.

20 A. That he did act in accordance with the rehabilitation
21 order and that as it related to commutations that were done by
22 FGIC during the rehabilitation proceeding, that they were all
23 brought in front of the Court for review and approval, and they
24 were all approved by the Court.

25 Q. Did you ever discuss the concept of commutation of

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1 policies with the ad hoc steering committee or steering group?

2 MR. BAIO: Objection.

3 MR. GOODMAN: Same objection.

4 MR. WYNNE: Ms. Healy clearly testified about --

5 THE COURT: Your question about the ad hoc, you're

6 talking about the steering committee in --

7 MR. WYNNE: She testified she was --

8 MR. WYNNE: Oh.

9 THE WITNESS: Which steering committee?

10 THE COURT: Steering committee in the rehabilitation
11 proceeding.

12 MR. WYNNE: In the rehabilitation, Your Honor.

13 THE COURT: Overruled.

14 A. I'm sorry. Could you just --

15 Q. Did you have discussions about the concept of commutation
16 of policies with the ad hoc steering committee in the
17 rehabilitation proceeding?

18 A. Yes, I did.

19 Q. Could you describe those conversations?

20 A. We talked about early on the commutation of CDS
21 transactions but also talked in general terms about the ability
22 to commute any and all types of policies. In fact, certain
23 members of the steering committee encouraged FGIC to commute
24 other policies that would be accretive.

25 Q. Were there negotiations with the steering committee with

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1 respect to limiting FGIC's rights to commute or terminate
2 policies?

3 A. No.

4 Q. Do you recall whether Freddie Mac or any member of the ad
5 hoc steering committee group attempted to negotiate any such
6 limitations with respect to the type of policies that could be
7 commuted with respect to the rehabilitation plan?

8 A. There were none to my knowledge.

9 Q. Okay. Mr. Dubel, you also have, I believe, been here and
10 heard the testimony of the trustees and the opening statements
11 that were made on last Friday. Is that correct?

12 A. Yes, that's correct.

13 Q. Okay. And you have been -- how were you involved in the
14 negotiations with respect to the FGIC settlement agreement?

15 MR. BAIIO: Objection.

16 THE COURT: I'm going to sustain the objection to the
17 form of that question, because the mediation is off limits.

18 MR. WYNNE: Okay. I understand, Your Honor, and --

19 THE COURT: So ask another question.

20 Q. Mr. Dubel, can you explain your role with respect to the
21 FGIC settlement agreement? Just your role, not the content of
22 any negotiations.

23 A. Yes. I was the lead negotiator for FGIC.

24 Q. Okay.

25 THE COURT: I think that's in your direct testimony.

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1 MR. WYNNE: I was just doing it for context, Your
2 Honor.

3 THE COURT: Okay.

4 MR. WYNNE: The question I was just doing for --
5 I'm --

6 THE COURT: Go ahead.

7 MR. WYNNE: -- switching subjects to our final
8 subject --

9 THE COURT: All right. Go ahead.

10 MR. WYNNE: -- so I was just doing that.

11 Q. Without revealing the substance of the negotiations that
12 occurred during the mediation were there negotiations with
13 respect to the commutation amount of 253 million dollars?

14 MR. BAIO: Objection.

15 THE COURT: Sustained.

16 MR. WYNNE: Your Honor, I'd like to be able to
17 inquire. There was clear testimony that there were no
18 negotiations. In the opening statements they have made a
19 point, and we think it's very misleading the way that they have
20 done it, that there were no negotiations with respect to the
21 253.

22 THE COURT: I'll permit the question.

23 MR. WYNNE: What?

24 THE COURT: I'll permit that question.

25 MR. WYNNE: Thank you, Your Honor.

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1 THE COURT: But not the details of the negotiations.

2 MR. WYNNE: Not the details. Just whether or not
3 there were.

4 THE COURT: Go ahead.

5 Q. Mr. Dubel, do you want me to repeat it or do you --

6 THE COURT: Yes, please. Go ahead. So we have a
7 clear --

8 Q. Without revealing the substance of the negotiations, were
9 there negotiations with respect to the commutation amount of
10 253 million dollars?

11 A. There were extensive negotiations.

12 Q. With the same preface, without revealing the substance of
13 the negotiations, were there negotiations over other terms that
14 are in the FGIC-ResCap settlement agreement? I don't want to
15 hear any specific substance, just were there those
16 negotiations?

17 MR. BAIIO: Same objection.

18 THE COURT: Overruled. You opened the door to this.

19 A. There were extensive negotiations.

20 Q. Mr. Dubel, when did those negotiations occur?

21 MR. BAIIO: Same objection.

22 THE COURT: Sustained. That I'm not letting. He said
23 there were negotiations.

24 MR. WYNNE: Okay. Thank you, Your Honor.

25 THE COURT: You got what you wanted.

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1 Q. Mr. Dubel, who participated in those negotiations,
2 without, again, telling me the substance of any negotiations?

3 THE COURT: His direct testimony is he was the lead
4 negotiator.

5 MR. WYNNE: No. Who participated on the other side?

6 MR. BAIO: Same objection.

7 THE COURT: Sustained.

8 MR. WYNNE: Your Honor, I'd like one moment.

9 Q. Mr. Dubel, have there been any material changes with
10 respect to FGIC since you testified on Friday?

11 MR. BAIO: Objection.

12 THE COURT: Overruled.

13 A. Yes, there has.

14 Q. Could you describe that?

15 A. Yes. The rehabilitator determined that it was appropriate
16 for us to go effective, and we went effective on the plan of
17 rehabilitation this morning. We are no longer in
18 rehabilitation.

19 MR. WYNNE: Thank you, Your Honor. Your Honor, I
20 recognize that was, sort of, beyond the scope, but we thought
21 it was important to at least inform the parties and the
22 Court --

23 THE COURT: Okay.

24 MR. WYNNE: -- about that, which is why I asked that
25 question.

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1 THE COURT: Okay.

2 MR. WYNNE: Thank you.

3 THE COURT: Cross-examination?

4 CROSS-EXAMINATION

5 BY MR. GOODMAN:

6 Q. Good afternoon, Mr. Dubel. In your witness binder that
7 your counsel handed out, can you turn to that for a moment,
8 please?

9 A. Yes, sir.

10 Q. And I believe it's Exhibit 6.

11 THE COURT: Tab 6?

12 MR. GOODMAN: Excuse me. Tab 6.

13 Q. It says it's --

14 THE COURT: It's Exhibit 3?

15 Q. I believe it's dated June 18, 2013 from --

16 THE COURT: Exhibit 317?

17 MR. GOODMAN: Exhibit 317. Thank you, Your Honor.

18 Q. Now, the date of this exhibit, this e-mail from Dana
19 Kaufman is June 18, 2013. Is that correct?

20 A. That is correct.

21 Q. And that was after the time when FGIC filed its order to
22 show cause in order to enter into the settlement, the ResCap
23 settlement. Isn't that correct?

24 A. Yes, that is correct.

25 Q. So I would believe by about that time our client would

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1 have realized that all bets are off with respect to commutation
2 of the RMBS policies. Is that correct?

3 A. I don't know what your client would believe.

4 Q. Okay.

5 A. I'm sorry.

6 Q. Well, thank you. But the settlement, the order to show
7 cause to approve the settlement had already been filed,
8 correct?

9 A. That's correct.

10 Q. Okay. Thank you. Now, I believe you were in court when
11 the trustees testified that as of May 24, 2013 they started to
12 notify the certificate holders of the fact that there was a
13 settlement. Is that correct? Were you there?

14 A. I believe that I stepped out at that point in time when
15 that discussion came up.

16 Q. Is that your understanding?

17 A. As I understand it they started the process right
18 thereafter. I'm not sure whether it was 24th, 25th, but
19 shortly thereafter.

20 Q. Okay. But it became public knowledge about that time, the
21 24th, 25th, correct?

22 A. It would have become public knowledge when it was filed
23 with the bankruptcy court and the rehabilitation court.

24 Q. Okay. So it wouldn't have become --

25 A. And I'm not sure when it was, but --

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1 Q. It wouldn't have become -- and that was when?

2 A. In that general time frame, yes.

3 Q. Around that general time frame. Did you bother at that
4 point in time to notify my client the fact that you were going
5 to commute their FGIC-wrapped ResCap securities policies?

6 A. I believe that there was a -- that you had actually --
7 Mr. Goodman, that you had actually reached out to me and to
8 Mr. Holtzer to discuss the affirmation of Mr. Holtzer.

9 Q. Okay. That wasn't my question. My question was, at the
10 time that the trustees were filing the notice, public notice
11 that the settlement -- that they were entering into the
12 settlement with FGIC and ResCap, did you notify my client, at
13 that time, that you intended to commute their ResCap policies?

14 A. At that specific time, no.

15 Q. Okay. Thank you. Please turn to tab 3; it's Exhibit 316,
16 I believe.

17 A. Yes, sir.

18 Q. And this -- you just testified a few minutes early to,
19 this was the Aardvark transaction; is that what you referred to
20 it as?

21 THE COURT: No, he testified this is the quarterly
22 financial statement, and there's --

23 MR. GOODMAN: Okay, I apologize.

24 THE COURT: -- a footnote that has the --

25 MR. GOODMAN: I apologize; I got a little ahead of

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1 myself.

2 Q. Please turn to page 25.

3 A. 25 of 55?

4 Q. 25 of 55.

5 A. Yes, sir.

6 Q. 6.19.

7 A. Yes, sir.

8 Q. Your counsel directed you to that page a few minutes ago.

9 And you were looking at the first full paragraph, regarding an
10 RMBS commutation, is that correct?

11 A. Yes, this is what I referred to, not what my counsel
12 directed me to. Yes.

13 Q. Okay. Well, thank you for sharing that. Was this the
14 Aardvark transaction that's referred to in here?

15 A. As I said earlier, yes, this -- what is referred in that
16 sentence is referring to the Aardvark transaction, yes.

17 Q. Thank you. And was that commutation done with the consent
18 of the RMBS policyholder?

19 A. Yes, it was. Yes.

20 Q. And if you look at one, two, three -- I believe it's the
21 third sentence, or at the very least, the sentence in that
22 paragraph starting with "the decrease in projected claim
23 amounts"? Do you see that sentence?

24 A. Yes, "The decrease in projected claims" --

25 Q. Okay. And --

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1 A. -- "projected claims"; that's the -- yes.

2 Q. Um-hum. And at the end of that sentence, does it say,
3 "with no payment by FGIC"?

4 A. That's correct.

5 Q. Um-hum. And this was a consensual deal, right?

6 A. Yes, it was.

7 Q. Okay. Thank you.

8 THE COURT: Who is the policyholder?

9 THE WITNESS: Bank of New York -- Bank of New York
10 Mellon or one of its entities as the trustee.

11 THE COURT: So when you say it was done with the
12 consent of the policyholders, whose consent are you referring
13 to?

14 THE WITNESS: The Bank of New York, as the
15 policyholder.

16 Q. And was Bank of New York a trustee -- in a position of a
17 trustee in that transaction?

18 A. Yes.

19 Q. Okay. And were there any objections by the investors in
20 the underlying --

21 MR. GOODMAN: Well, strike that.

22 Q. Were there investors holding on to securities that were
23 part of that trust that Bank of New York acted as trustee on
24 behalf of?

25 A. Yes, there were.

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1 Q. Um-hum. And do you know if any of them objected?

2 A. They did not.

3 Q. Thank you. Now, am I correct that with respect to the
4 members of the steering committee, the steering committee that
5 my client, Freddie Mac, was participating in -- you know which
6 steering committee I'm referring to?

7 A. I assume you're referring to the one that was involved in
8 the FGIC rehabilitation, since the term steering committee is
9 probably used five or six times in different areas here.

10 Q. Exactly; I'm just trying to clarify. Thank you.

11 A. Yes.

12 Q. That's the one I'm referring --

13 A. Yes.

14 Q. So when I say steering committee, that's the one I'm
15 referring to.

16 A. I'll assume that, unless you say differently, yes.

17 Q. Now, the committee was composed, largely, of RMBS security
18 holders, correct?

19 A. It had a mix of everybody that held various different
20 securities.

21 Q. Um-hum. But there were significant amounts of RMBS
22 security holders on that committee, correct?

23 A. That is correct, yes.

24 Q. And my client was one of the largest, if not the largest,
25 right?

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1 A. They were one of the largest, if not the largest --

2 Q. Okay.

3 A. I don't recall --

4 Q. Thank you.

5 A. -- where their size ratio was, yes.

6 Q. During the rehabilitation proceeding, did you ever commute
7 any of those policies prior to entry into the settlement
8 agreement with FGIC and ResCap?

9 A. Any of which policies? Any of --

10 Q. Any of the RMBS policies held by the steering committee --
11 members of the steering committee?

12 A. Yes.

13 Q. And which one was that?

14 A. I believe the Aardvark transaction.

15 Q. The one we just talked about earlier, that was the only
16 one, and they were on the steering committee?

17 THE COURT: The they -- was Bank of New York on the
18 steering committee or were they investors?

19 THE WITNESS: No, Your Honor, it was not -- the
20 trustees were not -- they separately were involved in the
21 process.

22 I'm sorry, Mr. Goodman, your question again? I
23 apologize.

24 Q. I'm trying to focus you in on the members of the
25 steering --

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1 THE COURT: Just ask your question.

2 MR. GOODMAN: Thank you, Your Honor.

3 Q. Prior to entering into the settlement agreement with FGIC
4 and ResCap, did you commute any of the RMBS policies that
5 members of -- excuse me, that members of the steering committee
6 held certificates for?

7 A. I believe we did.

8 Q. And the ones -- which one was that?

9 A. I believe it was the Aardvark transaction.

10 Q. That was Aardvark; that was it.

11 A. I may have mixed up, but I believe it was the Aardvark
12 transaction.

13 Q. Okay. And we just discussed the Aardvark was a consensual
14 transaction, correct?

15 A. Yes, it was.

16 Q. And no one objected to that, correct?

17 A. That's correct.

18 Q. And you provided the steering committee with information
19 about that transaction, am I right?

20 A. We did.

21 Q. Prior to entering into it, or after you entered into it?

22 A. Prior -- prior to court approval, after it was entered
23 into.

24 Q. Okay. Thanks. Okay. Now, just so I'm clear --

25 THE COURT: Whether you're clear or not --

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1 MR. GOODMAN: Fair --

2 THE COURT: -- you're on borrowed time.

3 MR. GOODMAN: I'm just about out of time, I
4 understand. This is an important question.

5 THE COURT: You're out of time, but I'm allowing you
6 to ask these questions.

7 MR. GOODMAN: I appreciate that, Your Honor.

8 Q. Am I correct that you never -- you never communicated to
9 the steering committee members that you would commute the RMBS
10 policies, is that correct?

11 A. No.

12 Q. Okay.

13 (Pause)

14 MR. GOODMAN: Okay. Your Honor, the issue here is
15 that I want to examine the witness on statements he made at his
16 deposition, and we don't have that binder here with his
17 deposition, that I'm aware of.

18 THE COURT: It's got to be here. I mean, I've got --
19 this courtroom is filled with documents, and I'm sure it
20 includes the Dubel transcript. Can somebody help Mr. Goodman
21 out?

22 UNIDENTIFIED SPEAKER: Yeah, it's Exhibit FG, Your
23 Honor.

24 MR. GOODMAN: FG, thank you.

25 UNIDENTIFIED SPEAKER: FG.

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1 (Pause)

2 THE COURT: Alex, go ahead. We're going to give the
3 witness a copy.

4 MR. GOODMAN: Yeah --

5 THE COURT: Let's --

6 MR. GOODMAN: -- thank you.

7 THE COURT: Let's move on here.

8 MR. GOODMAN: Thank you, Your Honor. I appreciate
9 that.

10 THE WITNESS: Thank you.

11 Q. Mr. Dubel, you have Exhibit FG in front of you?

12 A. I do.

13 Q. Okay, I ask you to turn to page 58, line 16. Just let me
14 know when you're there.

15 UNIDENTIFIED SPEAKER: Can I see what you're --

16 MR. GOODMAN: Yeah, sure. You can look on, sorry.

17 UNIDENTIFIED SPEAKER: It's okay. What line?

18 MR. GOODMAN: Line 16, starting here.

19 Q. You with me, Mr. Dubel?

20 A. Line 16?

21 Q. Yeah, and it -- it states:

22 "And did the committee, the steering committee agree with
23 you that you had the right to commute the policies insuring the
24 trust that had issued their securities?

25 "A. They agreed that they were in full agreement that we

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1 should have the right to commute any policies that -- that we
2 could work our arrangements with.

3 "Q. Including the policies insuring the underlying securities
4 in the trust?

5 "A. I don't believe that we talked about specific policies.
6 We talked about any policies that FGIC had issue, and they were
7 fully supportive of us commuting any policies that FGIC had
8 issue."

9 So you had no specific discussions with them regarding
10 commuting RMBS policies, am I correct?

11 A. Well, I believe, as I stated here, that it's any policies
12 and RMBS policies are part of the policies that FGIC issued, so
13 I'm referring to that.

14 Q. Did you have specific discussion with them regarding
15 commuting the RMBS policies that were insuring their
16 securities?

17 A. I did not have specific discussions about that.

18 Q. Thank you.

19 A. It --

20 MR. GOODMAN: No further questions, Your Honor.

21 THE COURT: Mr. Wynne?

22 MR. BAIO: May I ask a few, Your Honor, just a few?

23 THE COURT: Go ahead, Mr. Baio.

24 MR. BAIO: Thank you.

25 CROSS-EXAMINATION

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1 BY MR. BAIO:

2 Q. Sir, you testified just a while ago, that the steering
3 committee encouraged commutations because they were accretive.
4 Do you remember saying that?

5 A. I do.

6 Q. And the steering committee encouraged those commutations
7 because they believed, in your view, that the accretive quality
8 would redound to their benefit, correct?

9 A. I don't know what they believed. I know that from my
10 point of view if it would be accretive it would redound to all
11 of the policy holders that remained at FGIC.

12 Q. So it would eliminate those policyholders' claims in the
13 future who were being commuted, but it would improve or be
14 accretive for everybody else, correct?

15 A. That would be the intention, yes.

16 Q. And the steering committee encouraged that. Isn't that
17 correct?

18 A. That is correct.

19 Q. Okay, now in connection with the commutations that you
20 identified, they were all consensual, correct?

21 A. Yes, they were.

22 Q. And in connection with those commutations, the trustees
23 did not seek any orders from either the state court or any
24 bankruptcy court that the commutations were in the best
25 interests of the policyholders, correct?

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1 MR. WYNNE: Objection, beyond the scope, Your Honor.

2 THE COURT: Sustained.

3 MR. BAIIO: Your Honor, he -- he asked specifically
4 about --

5 THE COURT: Ask your next question.

6 Q. Did the trustees seek any exculpation in connection with
7 the commutations, from any courts?

8 MR. WYNNE: Objection, it's beyond the scope, Your
9 Honor.

10 THE COURT: Sustained.

11 Q. Were the commutations court approved?

12 A. They were approved by the Rehabilitation Court.

13 Q. Not by any bankruptcy court?

14 A. There were no bankruptcy courts involved in those
15 transactions.

16 Q. No other court was involved.

17 A. No other court.

18 Q. And to the extent there were findings, they are in those
19 publicly filed documents, correct?

20 MR. WYNNE: Objection.

21 THE COURT: Sustained.

22 Q. Now, do you -- do you know who Dave Williams is?

23 A. I do.

24 Q. And --

25 A. I assume you're talking Dave Williams of CQS?

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1 Q. Yes, of CQS.

2 A. I do.

3 MR. WYNNE: Objection, beyond the scope.

4 THE COURT: Sustained.

5 Q. Well, you were negotiating with a number of people as to
6 withdrawing objections to the FGIC rehabilitation plan, which
7 you've testified about here.

8 MR. WYNNE: Objection.

9 THE COURT: Sustained.

10 Q. Do you recall notifying Mr. Williams that in fact policies
11 would be commuted, policies in which he had an interest?

12 MR. WYNNE: Objection.

13 THE COURT: Overruled as per yes or no.

14 A. No, sorry.

15 Q. And you -- you never told him, isn't that correct?

16 A. No, he never asked me.

17 Q. But he was in discussions with you, correct?

18 A. I had to be careful what I said to him because he told me
19 repeatedly that he did not want to have what he would view as
20 material amount of public information. So I was very careful
21 in -- in what I provided to him because he wanted to you know,
22 stay on what's referred to as the public side.

23 Q. But you continued to keep from him the commutation, even
24 when you were no longer bound by the mediation agreement.

25 Isn't that correct, by the mediation order, isn't that correct?

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1 MR. WYNNE: Objection.

2 THE COURT: Sustained.

3 Q. Well, there came a time when you were no longer bound by
4 the mediation order to talk about commutation, correct?

5 MR. WYNNE: Objection.

6 THE COURT: Sustained.

7 MR. BAIO: One second, Your Honor.

8 Q. There were no objections files to any of the commutations?
9 Is that correct?

10 A. You're referring to the other commutations in the FGIC --

11 Q. Yes.

12 A. -- there were none, to my knowledge, no.

13 Q. Unlike in this case, correct?

14 A. That is correct.

15 THE COURT: Your time is up, Mr. Baio.

16 Mr. Shore?

17 MR. SHORE: It felt so lonely there in the back, so I
18 mean --

19 THE COURT: Yeah, I'm sure.

20 CROSS-EXAMINATION

21 BY MR. SHORE:

22 Q. Mr. Dubel, I think we've only met outside the context of
23 the case, outside in the hallway. I'm Chris Shore, from White
24 & Case on behalf of the ad hoc group of junior secured note
25 holders. I don't know whether you read it or not, but it's in

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1 evidence as Exhibit C. It's the debtors' motion and in
2 particular, their omnibus reply in further support of the
3 motion.

4 At heading B which is the ad hoc group's objections to the
5 minimum allowed claim amount provided in the settlement
6 agreement has no merit is a heading 1: "Providing FGIC the
7 minimum allowed claim amount in advance of a plan is entirely
8 appropriate." And at paragraph 34, the debtors say, "In light
9 of the pending proceedings in the Rehabilitation Court, the
10 parties sought approval of the settlement agreement in
11 connection with and prior to FGIC's imminent emergence from
12 rehabilitation, and separate from and prior to the plan-
13 confirmation process in this Court."

14 So I have two questions. Is it fair that you did not need
15 a ruling from this Court prior to your emergence from the
16 rehabilitation?

17 MR. WYNNE: Objection, beyond the scope, Your Honor.

18 THE COURT: Sustained.

19 Q. And one other question, you didn't need a ruling from the
20 state court in the approval of the settlement agreement before
21 you exited?

22 MR. WYNNE: Objection.

23 THE COURT: Sustained.

24 Mr. Wynne, any further questions?

25 MR. WYNNE: No, Your Honor.

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1 THE COURT: You're excused, Mr. Dubel.

2 THE WITNESS: Your Honor, will somebody get this?

3 THE COURT: Yeah, one of my -- one of my law clerks,
4 as if we don't have enough copies of it already.

5 All right, do the proponents rest?

6 MR. KERR: Your Honor, I just need to do one quick
7 circle around just to make sure.

8 THE COURT: Go ahead.

9 MR. KERR: We rest.

10 THE COURT: All right, all parties have rested.
11 It's -- depending on which clock one looks at, it's -- on my
12 watch it's 3:11. We're going to take a fifteen minute recess
13 and then despite the fact that the objector's time has expired,
14 I'm going to hear closing statements.

15 How long do you estimate you would be, your side would
16 be?

17 MR. KERR: Your Honor, I think we could be an hour and
18 I say that with this caveat: I'm going to speak. Mr. Siegel's
19 going to speak on behalf of the trustee. And Mr. Wynne is
20 going to speak on behalf of FGIC, and then Mr. Kaufman will
21 speak on behalf of the committee. And we're going to try to
22 keep it -- and we worked to not duplicate each other.

23 THE COURT: Well, let's -- and let me hear from the
24 other side.

25 How long do you estimate you would be?

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1 MR. BAIIO: Ten minutes, Your Honor.

2 THE COURT: Mr. Goodman?

3 MR. GOODMAN: Same amount, Your Honor.

4 THE COURT: Mr. Shore?

5 MR. SHORE: Yeah, ten to fifteen, Your Honor.

6 THE COURT: Okay -- let me ask this before -- it
7 doesn't seem to me that anyone has contested -- or maybe Mr.
8 Shore has, but I don't think so -- that the proposed settlement
9 is in the best interests of the debtors, that it's fair,
10 equitable, and in the best interests of the debtors. Does
11 anybody disagree with that?

12 MR. SHORE: We have objected, Your Honor.

13 THE COURT: You have?

14 MR. SHORE: Yes.

15 THE COURT: Okay, and you're going to argue that
16 point?

17 Is anybody else going to argue that? All right --

18 MR. KAUFMAN: I'm going to argue against it.

19 THE COURT: Yeah, I know you will, Mr. Kaufman.
20 Surprise, surprise.

21 MR. KERR: And Your Honor, I'm still writing mine,
22 so --

23 THE COURT: You're still writing yours. Okay, all
24 right.

25 MR. KERR: Your Honor, one -- I understand Ms. Patrick

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1 is going to do a short closing, as well.

2 THE COURT: I'm sorry? Ms. Patrick is --

3 MR. KERR: Ms. Patrick, as well.

4 THE COURT: Okay, all right, we're going to resume at
5 3:30. I'm going to give the proponents forty-five minutes,
6 which is shorter than you've -- you may still have time on the
7 clock but forty-five minutes will be plenty of time for your
8 side, okay?

9 MR. KERR: That's fine, Your Honor. We'll work to be
10 within that time.

11 THE COURT: Okay, and I will listen to the objectors
12 to the amounts of time that they said they would need. All
13 right, see you at 3:30.

14 (Recess from 3:14 p.m. until 3:34 p.m.)

15 THE COURT: All right, please be seated.

16 Mr. Kerr.

17 MR. KERR: Your Honor, Charles Kerr of Morrison &
18 Foerster. Your Honor, I've taken your admonitions to heart and
19 have spent the last ten minutes cutting out much of what my
20 glamorous closing --

21 THE COURT: I'm sure it would've been great.

22 MR. KERR: And that I did for my wife last night, so
23 I'm -- she's going to be disappointed. But so it'll be a
24 little choppy but I still want to highlight a couple of key
25 facts that I think -- and key evidence that I think is

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1 important to be in the record and be in the closing for Your
2 Honor to refer to.

3 THE COURT: Okay, look -- I'm going to get -- this
4 isn't getting you to cut back.

5 MR. KERR: I know.

6 THE COURT: I am going to get proposed findings of
7 fact and conclusions of law, and I had questions yesterday did
8 I want to hear this argument today. Yes, I do. But you know,
9 I'll get the proposed --

10 MR. KERR: And I realize that, Your Honor.

11 THE COURT: Go ahead, Mr. Kerr.

12 MR. KERR: Okay, so in my opening on Friday morning, I
13 told the Court that the settlement provides substantial
14 benefits to the debtors and the estates. And I don't think --
15 and I think the evidence that we put in has established that,
16 at whatever standard needs to be done.

17 In our post-trial proposed findings of fact includes
18 law and we'll detail the specific testimony and facts. And
19 given my limited time, I'm only going to try to highlight some
20 of that here. I will describe, however, each of the Iridium
21 factors this Court needs to consider when deciding whether to
22 approve the agreement, and the fundamental benefits provided by
23 the agreement are fully supported by the evidence.

24 In fact, with respect to most of the Iridium factors,
25 the objectors have not even challenged them at all.

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1 Your Honor, we put into evidence the settlement
2 agreement as Exhibit 1 and testimony by Mr. Kruger about how
3 the settlement agreement operates and the specific benefits it
4 provides to the debtors. And I refer to Mr. Kruger's direct
5 testimony, paragraphs 27 through 34 and 37 through 40. And
6 that evidence is, I think, undisputed.

7 First, the evidence shows that the settlement
8 agreement resolves and substantially reduces the 5.55 billion
9 dollars in FGIC claims. And what it's done is it's reduced
10 those claims down to a figure of a minimum claim of 596.5 and
11 then a potential ceiling of a claim of three claims at 596.5,
12 of which the debtor can challenge above that minimum amount.
13 And Your Honor, whether you look at the floor, whether you look
14 at the ceiling, or you look at the range, there is no dispute
15 that these amounts reflect a substantial reduction in the
16 amount of claims that FGIC could pursue.

17 In addition, under section 2.01(a) of the settlement
18 agreement, FGIC released all of its claims against the debtors
19 subject to the range of allowed claims I just described.
20 Again, not disputed.

21 Now, let me stop here and briefly discuss and address
22 two issues raised by the JSNs, about how these parts of the
23 settlement agreement operate. First, in their questioning of
24 Mr. Kruger, the JSNs tried to suggest that because if the
25 global settlement does not become effective, FGIC will be able

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1 to assert claims against each of RFC, GMAC Mortgage and ResCap
2 of 596.5, and the debtors can object to those claims to the
3 extent they exceed the minimum-allowed amount. And this could
4 lead to additional litigation over the FGIC claims.

5 THE COURT: It could.

6 MR. KERR: And I say, Your Honor, while that is true,
7 Mr. Kruger explained why, in his judgment, this was still a
8 good compromise for the debtors. And I cite here, Your Honor,
9 Mr. Kruger's testimony at 173 -- page 173, lines 7 to 174 line,
10 5 of Friday's transcript.

11 Second, the JSNs have tried to suggest that because
12 under the settlement agreement FGIC has reserved its ability to
13 pursue claims against Ally, which it could do if the global
14 settlement is not approved. And the release of FGIC's claims
15 against the debtors is therefore illusory because FGIC could
16 sue Ally, and Ally could turn around and sue the debtors back,
17 and seek indemnification.

18 And I would suggest in making this argument that JSNs
19 are talking out of both sides of their mouth, Your Honor. In
20 their supplemental objection, the JSNs themselves cite to the
21 examiners' report, and acknowledge that these types of claims
22 that FGIC could potentially assert against Ally for alter ego
23 and aiding and abetting have no validity or chance of success.
24 And that's supplemental opposition at 23, note 8. Moreover,
25 this argument is difficult to reconcile with the JSN's argument

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1 that ResCap has no such alter ego or aiding and abetting
2 liability for RFC and GMAC Mortgage, but that Ally would.

3 Moreover, even if FGIC asserted such claims, the
4 chance that Ally could successfully assert claims against the
5 debtors for indemnification is highly unlikely. First, any
6 such claims would be subject to challenge on a number of
7 grounds, including such as 502(e). Second, if FGIC claims
8 against Ally were based on aiding and abetting, any claim over
9 by Ally against the debtors could very well be subject to
10 equitable subordination.

11 And I must say, and I suspect if Ally in fact asserted
12 those indemnification claims against the debtors, Mr. Shore
13 would be standing right here, shoulder to shoulder with me,
14 pounding the lectern and saying that those claims are spurious
15 and have no value.

16 In any event, Mr. Kruger testified at page 179, lines
17 4 to 25, that even if one can use their imagination to spin out
18 unsubstantiated theories of what types of claims might be
19 asserted if the global settlement does not become effective,
20 and chaos results, this settlement and all the benefits it
21 brings still made sense in his business judgment. And we think
22 that's the right answer, Your Honor.

23 Let's turn back to the other benefits of the
24 settlement agreement. The evidence shows, and it's undisputed,
25 that under section 2.01(a)(4) of the settlement agreement, the

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1 FGIC trustees released a substantial portion of their claims
2 against the debtors. Mr. Kruger testified it was his
3 understanding that those potential collateral losses for the
4 FGIC-wrapped trust were potentially three to four billion
5 dollars in total potential collateral losses. And that's Mr.
6 Kruger's direct testimony at paragraphs 22 and 23, and the
7 trial transcript at 181, line 20 to 183, line 10. And those
8 estimates were consistent with Mr. D'Vari's expert testimony,
9 which was not challenged by cross.

10 Thus, the evidence shows and the objectors have often
11 no evidence to the contrary, that the settlement releases
12 billions in potential claims against the debtors. And as I
13 will explain again, when I just refer to the Iridium factors in
14 second, Your Honor, if this settlement agreement is not
15 approved, the debtors will be faced with having to litigate
16 these complex and difficult claims asserted by FGIC and the
17 FGIC trustees.

18 Mr. Kruger testified, based on his involvement in
19 these bankruptcy cases, his experience in the RMBS settlement
20 litigation, and his experience of fifty years as a
21 restructuring lawyer; these types of claims are complex, and
22 difficult, and there's great uncertainty how they would be
23 resolved.

24 Moreover, the testimony by both Mr. Kruger and by Mr.
25 Lipps shows that litigating these types of claims is very fact

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1 intensive, and the discovery will be lengthy and costly. And I
2 refer to Kruger's direct testimony, paragraphs 47 through 49;
3 and Lipps' amended direct testimony, paragraphs 148 -- I mean
4 141 to 148, and 150 to 153.

5 THE COURT: You know, my takeaway from Mr. Kruger's
6 testimony is standing alone it's a good deal. If the plan gets
7 confirmed it's even a better deal. I mean that's the long and
8 short of it.

9 MR. KERR: I --

10 THE COURT: From the debtors' standpoint.

11 MR. KERR: Yeah, from the debtors' standpoint and I
12 think that is right, Your Honor. And again, two other quick
13 benefits and we'll turn to the Iridium factors particularly.

14 Another benefit of this settlement agreement is that
15 the FGIC trusts are going to receive a settlement payment of
16 253.3 million and the added benefit of having 18 million of
17 their future premiums waived on the FGIC policies.

18 Mr. Dubel also testified about other benefits they
19 would get. While I will let the trustees and the FGIC
20 trustee -- the FGIC trustees and FGIC address the comparison
21 between that and the rehabilitation; there is no doubt that
22 receiving those funds alone is substantial benefit to the FGIC
23 trustees, and thus the creditors of the estate. And that
24 amount is better than perhaps getting a little more or a little
25 less over the time from the rehabilitation process while

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1 remaining at risk to FGIC's credit worthiness for the next
2 forty years.

3 I would suggest that not approving this settlement
4 because a small percentage of investors in the FGIC-wrapped
5 trust want to make a bet that in the marketplace using house
6 money to direct -- directly contrary -- is directly contrary to
7 the notions that settlements and compromises are favored in
8 bankruptcy, Your Honor.

9 Finally, Section 601 shows that a settlement agreement
10 cannot become effective until the Rehabilitation Court and this
11 Court approves the settlement. That's given the -- anybody who
12 has concerns the opportunity to come in and raise objections.

13 THE COURT: Does it have to be final orders from both
14 courts?

15 MR. KERR: I believe it does. I believe it does,
16 under 601, and I don't have the -- I can find it but I believe
17 it to be final orders, Your Honor.

18 THE COURT: You'll be waiting for a very long time for
19 a final order from a state court.

20 MR. KERR: I understand that, Your Honor. After
21 holding a hearing to consider the objections as you are aware,
22 the Rehabilitation Court has now approved the settlement
23 agreement, including a commutation of the policies issued by
24 FGIC. In this Court, only one group of actual creditors, the
25 JSNs, has raised any objection, and only a small percentage of

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1 the investors in the FGIC-wrapped trust have raised a concern.
2 Even those investors, however, as Your Honor noted, do not
3 challenge that this settlement's in the best interest of the
4 debtors or the debtors' estate.

5 So let me turn to the Iridium factors. And I'm not
6 going to recite the legal justification. I'll just refer to
7 Your Honor's decision in Dewey, which I think runs that
8 through.

9 THE COURT: No, I have these Iridium factors; they're
10 firmly impressed in my mind.

11 MR. KERR: Okay, and I understand that, Your Honor.

12 THE COURT: They only come up about twice a week.

13 MR. KERR: Okay, and I don't want to replot ground,
14 Your Honor. So let me just go through one, the balance between
15 the litigation's possibility of success and the settlement's
16 future benefits.

17 I've talked about the benefits of the settlement, and
18 I don't think those are in question and none of that's in
19 dispute. You have to balance that against the likelihood of
20 litigation's possibility of success.

21 What is important to recognize, that if this
22 settlement's not approved, it's not just one claim that will
23 need to be litigated. But multiple, competing claims between
24 the debtors, FGIC, the FGIC trustees, and a whole bunch of
25 other creditors.

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1 Mr. Kruger testified based on his involvement in this
2 bankruptcy and his experience as a restructuring lawyer that
3 "The issues that have to be litigated: the underlying contract
4 and tort claims, and the bankruptcy claims are very
5 complicated, and there's great uncertainty as to how they would
6 be resolved." And again I cite to his testimony from Friday.
7 I won't read it but it's pages 164, line 19 to 165, line 8 Your
8 Honor.

9 Second factor is likelihood of complex and protracted
10 litigation with the attended expense and inconvenience and
11 delay, including the difficulty in collecting the judgment.
12 None of the objectors have really disputed that if this unfolds
13 without a settlement, litigation's going to be long, complex,
14 and lengthy. And that's supported by both Mr. Kruger's and Mr.
15 Lipps' direct testimony. And I won't cite it to you. It'll be
16 in our findings of fact. I think I'm not going to say any more
17 about that, Your Honor. I don't think that's really in
18 dispute.

19 The paramount interest of the creditors include each
20 effected class' relative benefits, and the degree to which the
21 creditors either do or do not object or firmly support the
22 proposed settlement. I've already described the evidence
23 showing the benefits the settlement agreement brings to the
24 estates. Of the over forty --

25 THE COURT: Well the -- the objecting -- the Monarch

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1 and the other objecting investors, they say we have twenty-five
2 percent of the FGIC-wrapped bonds versus what was the figure
3 that was given this morning -- eight percent or less or
4 something, for the steering committee and the Talcott Franklin
5 group, their holdings. So you know, I'm not sure. I mean a
6 substantial group of investors have objected to the settlement.

7 MR. KERR: And I don't mean to mischaracterize it,
8 Your Honor, but I think what's important here, and I think
9 you'll hear this from Mr. Siegel; the issue is not to -- and I
10 think even related to the findings, is not that every single
11 investor is happy. It's whether or not as a whole the
12 investors are better off because of this, and that's I think
13 the standard to be done.

14 But I would like to point out though, of the over
15 4,400 parties that have filed claims against the debtors in
16 this proceeding, only one group of creditors, the JSNs, have
17 objected to this settlement agreement, and that silence is
18 telling. And I would suggest that the creditors recognize that
19 both this settlement agreement standing alone and as part -- as
20 a step toward the global settlement, is much to everyone's
21 benefit: the debtors, the debtors' estates, and the debtors'
22 creditors.

23 As to what other parties and interests support this
24 settlement, in paragraph 54 of Mr. Kruger's direct testimony,
25 he lists a large number of major constituencies in this Court

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1 that support this settlement.

2 THE COURT: The consenting claimants to the PSA
3 support the FGIC settlement.

4 MR. KERR: Correct. And I don't think I'll say
5 anything more about that, Your Honor. Although again -- I
6 will. Ms. Patrick -- I apologize, Your Honor. I can't resist.
7 One thing I do want to -- and I just want to -- obviously your
8 Court's -- Your Honor's aware of this.

9 THE COURT: Clocks' running, go ahead.

10 MR. KERR: Is that -- is that Ms. Patrick's clients
11 are also investors in the FGIC trust, as well as other trusts.

12 THE COURT: I have that in mind.

13 MR. KERR: Okay, the competency and experience of
14 counsel and the competency and experience of the bankruptcy
15 court reviewing, no one's touched that. And I don't -- I don't
16 think we do. I think there's no doubt that all these parties
17 were represented by competent counsel and thoughtful counsel in
18 how they've approached this.

19 The nature and breadth of the releases to be obtained
20 by the officers and directors, no one's challenged that. Mr.
21 Kruger dealt with that in his direct testimony.

22 The extent to which the settlement is the product of
23 arm's-length bargaining, I think this is the one place where
24 the creditors and perhaps the investors have sought to
25 challenge, based on the fact that the negotiation process

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1 leading up to the settlement agreement was confidential.

2 The objectors, I would suggest, offered no affirmative
3 evidence, however, that the settlement agreement was not the
4 product of arm's-length negotiations. And even in light of the
5 confidentiality limitations, the evidence that's in the record
6 support a finding that the settlement agreement was the product
7 of arm's-length bargaining.

8 And I would refer first to Exhibit 311, which is the
9 chronology that was submitted by FGIC, about the chronology of
10 the period over which this was negotiated. And Mr. Dubel's
11 rebuttal testimony recently about the fact it was different
12 back and forth in the commutation amount. And then I'd also
13 refer to Mr. Kruger's direct testimony from his perspective,
14 what he saw. And that's Kruger direct testimony paragraphs 5,
15 14, 57, and 58. And those conclusions were supported by Mr.
16 Dubel's direct testimony at paragraphs 6 through 7 and 10 and
17 18.

18 Let me just touch on business judgment for one second,
19 while not formally part of the Iridium factors, it's been an
20 issue that I think Your Honor's noted in the Dewey decision and
21 whatever. And I don't think there's any question here that Mr.
22 Kruger, in taking on the responsibility to be CRO of the
23 debtors, properly exercised his business judgment in making a
24 determination to enter into this settlement agreement.

25 That's reflected in both his engagement letter, which

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1 is Exhibit 30, which gave him that authority, and he testified
2 as well, that based on his overall review of the facts, his
3 involvement, his fifty years of experience, and his knowledge
4 about it that he got out of the RMBS settlement about the
5 contentions of the policies -- of the parties, that he believed
6 that in his business judgment this was the right thing to do.
7 And again I just cite to his direct testimony, paragraphs 10
8 through 15, 22 through 23, and 36 through 43.

9 Now, in their cross-examination of Mr. Kruger, the
10 JSNs tried to suggest that somehow his decision-making was not
11 thorough by trying to draw distinction between what he reviewed
12 and read over his months as CRO and what he specifically relied
13 on with respect to this.

14 And I think Mr. Kruger's testified and properly so at
15 Friday, at page 161, line 23 to 162, line 22 and 164, line 13
16 through 165, line 8, that he reviewed and relied on many things
17 over the months leading up -- his involvement as CRO, and all
18 of that came into his underlying thinking about why this was a
19 good deal. And as he also testified in direct and in his
20 cross, he brought his many years of experience as a bankruptcy
21 lawyer in reaching that decision.

22 So let me just turn to the proposed order and the
23 findings. Again, I'm going to leave the specifics of the
24 findings related to the trust and the investor trust to Mr.
25 Siegel and to FGIC. But there's no dispute here, I think, Your

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1 Honor, that those part of the findings that entering this
2 settlement agreement is in the best interest of the debtors and
3 the debtors' estate.

4 And the investors raised a bunch of -- a series of
5 objections about jurisdiction, and authority of the Court. We
6 dealt with them in our omnibus reply in support of this motion,
7 which is docket 4474, at pages 4 through 12. And I will leave
8 that to that, unless Your Honor has questions.

9 With respect to the factual support for the findings,
10 Your Honor, there's no real dispute, as I said, it's in the
11 best interest of the debtors. And with respect to the FGIC
12 trust, and the investors, again while leaving that to Mr.
13 Siegel, and Mr. Wynne; Mr. Kruger did testify that from his
14 perspective the basis of why he believed those findings were
15 correct. And again I refer to his testimony in paragraphs 41
16 and 42, of his direct, and at page 132 and 133 of the trial
17 transcript, why from his perspective he thought that was good.

18 In summary, Your Honor, the testimony and supporting
19 documentation that is now in evidence more than demonstrates
20 that the settlement agreement is fully supported by the Iridium
21 factors and reflects reasonable and fair compromise in
22 settlement. The evidence also fully supports the proposed
23 order approving the settlement agreement, including the
24 findings of the proposed order. And we ask the Court grant the
25 motion and approve the settlement.

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1 THE COURT: Thank you, Mr. Kerr.

2 MR. KERR: Thank you.

3 THE COURT: All right, who's next? Mr. Siegel?

4 MR. SIEGEL: Good afternoon, Your Honor. I have a few
5 basic points that I'd like to make.

6 The first thing is that although we are here to look
7 at the FGIC settlement in the context of the ResCap case this
8 cannot be separated out from the overall bankruptcy case, and I
9 am concerned, as I listen to the testimony that's been adduced
10 by the objecting parties and their argument, that they think
11 that somehow this is an a la carte menu that they can pick from
12 the things they like and they can exclude the things they don't
13 like.

14 That's not what's happened here. The negotiation here
15 was very complex. The idea that somehow, if we didn't do the
16 commutation, that somehow there would have still been a
17 settlement that was as beneficial as we believe it was to the
18 FGIC trusts, where they were able to achieve ninety-two million
19 dollars, is not only completely speculative, I don't believe it
20 would have been possible.

21 I also think, Your Honor, that when you look at what
22 was really going on here and you think about what the trusts
23 were doing, the trusts have two sources of payment. Their
24 sources of payment are their originators of the loans, against
25 whom they have the rep and warranty claims, and their monoline,

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1 FGIC. Now, it just so happens that both of them became
2 insolvent, and that wasn't a great thing for the investors, but
3 that's what happened. And a big part of the case had to do
4 with the competition between FGIC and the FGIC-based trusts
5 over the assets that were the subject of the ResCap bankruptcy.

6 What do I mean by that? What I mean by that is we
7 asserted rep and warranty claims on behalf of the trusts
8 against ResCap and also against Ally, I mean, essentially.
9 FGIC took the position that they were defrauded when they
10 entered into the insurance that paid our claims or that was
11 supposed to pay our claims. And how were they damaged? Well,
12 rep and warranty claims. I mean, there's some other assertions
13 they made, but a big part of what was going on here was the
14 allocation of the recoveries that we would receive from Ally
15 and ResCap between the trusts and between FGIC.

16 So what result did we achieve? The result we achieved
17 was that FGIC only got a claim equal to the amounts they
18 actually paid the trusts, and the balance was something that
19 was folded into the overall rep and warranty settlement. And
20 when we did the calculation, and it's true we didn't know the
21 exact number when we entered into it, but we knew it was a
22 significant number, there was ninety-two million dollars there.
23 So the suggestion when they testify that somehow they could
24 have gotten a piece of the 206 plus the 92 is just wrong. It's
25 wrong because the total damage amount is really 298. And why

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1 is it 298? Because that's the total amount that's being paid,
2 effectively, by ResCap and Ally with respect to the rep and
3 warranty losses.

4 And what did we do? We took a disproportionate chunk
5 of that for the benefit of the FGIC-wrapped trusts. That's
6 what happened. And that number, when you add it to the 253
7 commutation amount, results in a very significant recovery.
8 And, by the way, Your Honor, I'm not even talking about the
9 eighteen million yet. I'm not talking about the future expense
10 recoveries that have a nominal value of 140 million. Who knows
11 what they're going to be worth? We got a package of things
12 that are part of the settlement overall, and if you just
13 pretend that the value that was received was simply the
14 commutation payment you're not looking at the overall picture,
15 and I would submit that's not the way to do this.

16 So when you do that you say well, is this in the best
17 interests of the investors and did we act reasonably and in
18 good faith. And one thing the last two days have demonstrated,
19 to me at least, is just how complicated all of this is, how
20 people can disagree over the way they can run the numbers, how
21 this is not a science, how none of us know what's going to
22 happen over the next forty years. None of us know what would
23 happen if the settlement were not achieved and we had to go
24 through a litigation with Ally and the amounts that would have
25 been realized. That's what a settlement is about. It's

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1 exchanging uncertainty for certainty. And that's what we did.
2 We got a certain number.

3 It seems to me that the objections that we're getting
4 from the objecting parties really boil down to two things. One
5 is, frankly, they think they could have done a better job than
6 us. That's what they think. They think if they had been in
7 the room negotiating the number would have been higher. That
8 may be true. That may not be true. They weren't in the room.
9 And it wasn't their job to negotiate, frankly. It was ours.

10 The other thing they say is they think they had the
11 right to consent to the settlement in advance of us entering
12 into the settlement. That right is not present in the
13 documents. They don't have the right to approve a settlement
14 as an individual certificate holder. The right we did preserve
15 for them that we included in the settlement agreement we
16 insisted upon was that they would have the right to direct us
17 to opt out of the settlement. Whether they were able to do it
18 or they were not able to do it that was their right. They did
19 not try to do so. Therefore they defaulted to our judgment on
20 this. That's where we wound up.

21 So at the end of the day, when you talk about this
22 complex process, I think what you need to evaluate in
23 determining our good faith about whether or not this is the
24 right number is you need to look at the process we went
25 through.

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1 THE COURT: Let me stop you for a second.

2 MR. SIEGEL: Sure.

3 THE COURT: Did the investor objectors here hold
4 sufficient percentage of securities in FGIC-wrapped trusts to
5 be able to direct the trustees to opt out of the settlement?

6 MR. SIEGEL: Your Honor, I do not know. They did
7 provide us with holdings in individual trusts, but each of the
8 trusts have their own mechanisms for directions.

9 THE COURT: Let me ask it. Did the investor objectors
10 purport to direct the trustees to opt out of the FGIC
11 settlement?

12 MR. SIEGEL: Not prior to the PSA. There was a letter
13 sent to us, full disclosure, Your Honor, by Freddie Mac,
14 subsequent to the PSA, asking us to opt out. We explained to
15 them that that would constitute a breach of the plan support
16 agreement order and --

17 THE COURT: That letter's not in evidence, is it?

18 MR. SIEGEL: I don't think so. You're right, Your
19 Honor.

20 THE COURT: Okay.

21 MR. SIEGEL: You asked the question. I'm answering
22 it.

23 THE COURT: I did.

24 MR. SIEGEL: But you're right. It's not in evidence.

25 THE COURT: But in terms of what's in the record here,

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1 there is no evidence that the investor objectors instructed the
2 trustees to opt out of FGIC settlement. Is that correct?

3 MR. SIEGEL: Not that I can recall.

4 THE COURT: Okay. Go ahead, Mr. Siegel.

5 MR. SIEGEL: All right. Now, one of things I think we
6 should talk about -- I do want to talk about what they say the
7 numerical deficiencies in the settlement are, but before I do
8 that I want to spend a moment talking about the very
9 complicated cash flows that relate to the FGIC settlement, what
10 they talk about the CPPs. I just want to talk about why it is
11 that our advisors told us that despite the fact the global
12 number that's being described is twenty-seven to thirty cents
13 that, in fact, in their view the value that would be received
14 by the FGIC trusts would be closer to twenty-two cents for
15 those particular trusts.

16 The way that this is set up is that assuming the
17 number doesn't change you get an initial distribution of
18 seventeen and a quarter percent, and then as your claims accrue
19 over the next five years you would continue to get seventeen
20 and a quarter cents for all the new claims you would accrue,
21 and then, by the time the fifth year comes around, you would
22 get another three cents on the dollar. And I can't tell you
23 precisely how it ratchets up, but assume -- and, by the way,
24 this is completely within the discretion of FGIC, but that's
25 what the projections show.

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1 I am told that eighty percent of our claims will have
2 accrued within the next five years. Okay?

3 THE COURT: I heard that.

4 MR. SIEGEL: Roughly. So then what happens? Well,
5 with respect to us getting future distributions thereafter,
6 with respect to getting the difference between the twenty and
7 what they say is twenty-eight, which is, I believe, in nominal
8 dollars something around twenty-eight cents, we will have to
9 wait, or these trusts would have to wait over forty years to
10 get that remaining twenty-eight cents in nominal value.

11 Why are they different than the other trusts? They're
12 different than the other trusts because they've already accrued
13 the losses for which they're going to be compensated with that
14 twenty-eight nominal cents in dollars. The other trusts, or
15 the other insured parties, have not yet accrued the losses.

16 THE COURT: I have that point.

17 MR. SIEGEL: Okay.

18 THE COURT: I understand.

19 MR. SIEGEL: That's fine.

20 THE COURT: I understand that point.

21 MR. SIEGEL: I just wanted to spend a moment on it.

22 THE COURT: That's fine.

23 MR. SIEGEL: But I'll move on if Your Honor
24 understands that.

25 THE COURT: I understand that point.

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1 MR. SIEGEL: Okay. So then the only other point that
2 I want to make --

3 THE COURT: That was Mr. Pfeiffer who testified about
4 that on redirect.

5 MR. SIEGEL: Yes. Yes, it was, Your Honor.

6 THE COURT: On rebuttal.

7 MR. SIEGEL: We were concerned that --

8 THE COURT: Okay. I got it.

9 MR. SIEGEL: -- it was not clear enough.

10 THE COURT: Okay.

11 MR. SIEGEL: But thank you. In the Gibson declaration
12 at paragraph 45 what it says is "FGIC further applies a haircut
13 in the amount of forty percent resulting in a reduction to the
14 proposed expected recovery under the rehabilitation plan in the
15 amount of \$90.32 million". So they say that our settlement
16 shorts them ninety million dollars.

17 In the Goldstein declaration he gets at it a little
18 bit differently. He says "excluding the unexplained forty
19 percent reduction and the mischaracterized benefit of waived
20 premium payments", which we continue to believe is a benefit,
21 "the cash commutation payment, as calculated by FGIC, should be
22 362 million dollars." So I want to do some simple math, which
23 I think is based on the evidence.

24 We all agree that we start with 253 million dollars.
25 I think we also agree that under the allocation formula in this

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1 settlement there's another ninety-two million dollars coming.
2 So that gets us up to about 340 million dollars, more or less.
3 Then we have the eighteen million dollars, which we think is
4 clearly a benefit. Once you get to the eighteen million
5 dollars you exceed the Freddie Mac shortfall. You exceed the
6 Freddie Mac shortfall simply by getting the ninety-two million.
7 And in order to get to the Monarch number, you're about ten
8 million dollars away from that number, and, of course, I think
9 that's probably close enough, in any event, but we haven't even
10 considered the reimbursements that we don't how to calculate
11 that will go off into the future that have been foregone by --

12 THE COURT: And will come to you rather than to FGIC.

13 MR. SIEGEL: Exactly. So I would submit, based on the
14 evidence in front of you, to the extent to which they've said
15 that these settlements are deficient, which we don't believe
16 them to be, and to the extent to which they even have a
17 legitimate objection as to it as all, we've already
18 demonstrated they're getting as much as they think they should
19 have gotten.

20 THE COURT: Let me cut through this. Tell me why is
21 it that you believe the trustees acted reasonably and in the
22 best interests of the investors in approving the FGIC
23 settlement versus the FGIC rehabilitation plan.

24 MR. SIEGEL: I think, Your Honor, we were confronted
25 with two very uncertain outcomes for the trusts. One uncertain

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1 outcome would have been the continued protracted unknown
2 litigation with ResCap and Ally with respect to our claims and,
3 by the way, as related to that, the competition between us and
4 FGIC over who was going to get the money on the rep and
5 warranty claims. We had that on one side.

6 On the other side we had the uncertain distributions
7 coming out of the FGIC rehabilitation, where we did not know
8 what that number was going to be. We hired a financial
9 advisor. We participated very heavily in the mediation. We
10 ran calculations. We paid Duff & Phelps a lot of money to
11 understand the complexity of this thing, which they explained
12 to the trustees. The trustees looked at all of this. They
13 said that the numbers that we see coming to these trusts are
14 more than sufficient to take away the uncertainties to our
15 holders and give them a fair and, we think, a more than fair
16 recovery based upon the circumstances.

17 THE COURT: Right. And you believe what you've just
18 told is supported by the evidence in the record.

19 MR. SIEGEL: Yes, Your Honor. I do.

20 THE COURT: Okay. Go ahead.

21 MR. SIEGEL: And I think what you did was you simply
22 pushed me to my close, so I'm done.

23 THE COURT: Thank you very much, Mr. Siegel.

24 MR. SIEGEL: Thank you, Your Honor.

25 THE COURT: Ms. Patrick, are you next?

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1 MS. PATRICK: I think I am, Your Honor.

2 May it please the Court, Kathy Patrick for the RMBS
3 steering committee investors. A few additional points. There
4 have been repeated suggestions by the objectors to this
5 settlement that these policies are their claims or that they
6 are the investors' policies, but, as the Court rightly noted,
7 they are not. These policies belong to the trust.

8 THE COURT: This is undisputed. Go on. What's your
9 next point?

10 MS. PATRICK: And under the trusts it is not relevant
11 whether their clients have 23 percent or my clients have 7.6
12 percent. What is relevant is that one hundred percent of the
13 interest of all certificate holders, each and every one of
14 them, is represented by one set of parties in this proceeding,
15 and that is the trustees. And it is the benefit of all
16 certificate holders whose interests have to be vindicated here,
17 not the idiosyncratic risk tolerance of three certificate
18 holders out of thousands who received notice.

19 THE COURT: Well, four.

20 MS. PATRICK: Four.

21 THE COURT: Freddie Mac.

22 MS. PATRICK: Freddie Mac. Four. Who have received
23 notice and chosen not to object to this commutation; have, by
24 their silence, having been given notice, said the bird in the
25 hand is fine with us. And it's a very sizeable bird in the

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1 hand.

2 Going to the reasonableness of the trustee's decision
3 you have not only their own careful deliberations, Ms.
4 Sohlberg's testimony, the testimony of the trustee witnesses,
5 they did what they are entitled to do under the pooling &
6 servicing agreements. They retained an expert, Duff & Phelps.
7 Duff & Phelps did an enormous analysis and advised them that
8 this was NPV positive. And so they made their decision that
9 the bird in the hand certainty, rather than subjecting the
10 trusts to the risk of forty years of exposure to FGIC, an
11 entity that is in rehabilitation, why? Because it's --

12 THE COURT: Let me ask you this.

13 MS. PATRICK: Yes.

14 THE COURT: The ninety million that is pre --
15 estimated is ninety-two million distribution from the estate
16 estimated at this time, why wouldn't that be additive to either
17 the FGIC rehabilitation plan outcome as well as this outcome?

18 MS. PATRICK: Because I don't believe --

19 THE COURT: You added what I -- you, the trustees, add
20 the ninety million --

21 MS. PATRICK: Yes.

22 THE COURT: -- to --

23 MS. PATRICK: To the 253.

24 THE COURT: -- the commutation.

25 MS. PATRICK: Yes.

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1 THE COURT: Okay. Why wouldn't it likewise be
2 additive of the rehabilitation plan outcome?

3 MS. PATRICK: It's not additive, Your Honor, because
4 it exists only because of the global compromise. And that's a
5 point that I think I hold very dearly, since we spent months
6 achieving it, and I understand fully --

7 THE COURT: Global compromise that hasn't been
8 approved yet.

9 MS. PATRICK: Exactly.

10 THE COURT: Where you say global compromise is the
11 plan.

12 MS. PATRICK: Right. That's correct.

13 THE COURT: All right.

14 MS. PATRICK: And critical to that, Your Honor, is
15 that to assume that -- to use the Chinese metaphor menu, or I
16 like what I like and I don't like what I don't like -- to
17 assume that that ninety-two million dollars will be available
18 in a universe where the FGIC policies are not commuted and in a
19 universe where this compromise is not achieved so that in the
20 overall context the FGIC holders, the holders in the FGIC
21 trusts, are fighting with FGIC over who gets what dollars in --

22 THE COURT: But we won't know -- even if I approve the
23 FGIC settlement we won't know until plan confirmation whether
24 the ninety-two million really is additive of the result for the
25 certificate holders in this trust, FGIC-wrapped trust.

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1 MS. PATRICK: I fully understand that, Your Honor, and
2 that's why even without it our clients believe that this
3 compromise makes abundant sense. The compromise on its own,
4 the bird in the hand, the cash upfront, the real weirdness of
5 continuing to pay policy premiums for coverage that you're not
6 getting, I mean, you can go down the list of benefits the
7 trustees have achieved here. The release of the trusts from
8 the obligation to reimburse or reinsure a certificate insurer
9 that isn't covering them anymore. I mean, there is
10 something --

11 THE COURT: Okay. I've got that.

12 MS. PATRICK: -- very sad here about this in that
13 sense, but the key point is this. If this compromise means
14 anything it means that the trustees, under the PSAs, were
15 entitled to retain experts to advise them as to how all
16 certificate holders were better off, and they did that. And if
17 those PSAs mean anything they mean that the trustees are not
18 required to take financial risk when they act in the best
19 interests of certificate holders as they have done here, and
20 because of that they have come to get a very commonplace, very
21 simple order confirming that they've done their job, that
22 they've complied with the PSAs.

23 THE COURT: Okay. I've got that point.

24 MS. PATRICK: That's our point, Your Honor.

25 THE COURT: Thank you very much, Ms. Patrick.

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1 MS. PATRICK: Thank you.

2 THE COURT: Who's next? Mr. Wynne?

3 MR. WYNNE: Thank you, Your Honor. Richard Wynne on
4 behalf of FGIC, and I will be very brief, Your Honor. I only
5 have a few, very few things to say. But I want to pick up on
6 the question that Your Honor asked with respect to the ninety-
7 two million. And it points out, we have a lot of very strange
8 theories and theses that the objecting parties, and because
9 they're in different situations that they've propounded, that
10 that actually highlights.

11 On the one hand, FGIC has been criticized, that the
12 rehabilitator has been criticized that litigation recoveries
13 were excluded from the FGIC plan. And that was a big point
14 that they made, and that's simply statutory accounting. I
15 don't control the rehabilitator. The rehabilitator does what
16 they do under what -- we had some testimony about whether they
17 were probable and estimable. There's accounting terminology.
18 And that was not done.

19 So, on the one hand FGIC is, sort of, being accused of
20 saying well, under your rehab plan you're not considering these
21 wonderful claims that you have. And they are wonderful claims.
22 Every claim that FGIC has is a wonderful claim. We should
23 completely prevail.

24 But that is not the world of litigation. The world of
25 litigation, people lose. You can win. You can lose on appeal.

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1 We've all seen that, and these are big high-ticket cases, and
2 Mr. Lipps testified, and what was allowed, very well about that
3 there's a very limited experience past the trial court, and you
4 only have a few trial court decisions. And this whole area is
5 brand new. It's, sort of, an explosion in the last five years.
6 So for anyone to say with certainty what FGIC's claims against
7 Countrywide are going to be worth or not, there's no certainty.
8 So we have that on the one hand. We're not counting these
9 great litigation claims.

10 On the other hand, we pointed out there's the
11 municipal market, which is over a third of FGIC's exposure, has
12 dramatically declined since the FGIC rehabilitation plan and
13 its disclosure was put out. So we have those sort of
14 counterbalancing, and now we have this ninety-two million
15 dollar issue. And when I think about it, the ninety-two
16 million dollars is sort of being attacked by the objectors
17 because it's not certain because the plan hasn't been
18 confirmed. Well, when we started out this case, most of the
19 parties on, sort of, this side of the room, were fighting. And
20 we went through eight months of as intense fighting as anyone
21 has seen over the deal that Ms. Patrick and AFI and the
22 debtors --

23 THE COURT: Trust me, Mr. Wynne, I'm very aware --

24 MR. WYNNE: I know you are -- I know you are, Your
25 Honor. But now twenty-three parties spent five months in a

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1 mediation. And I want to direct you, Your Honor -- we didn't
2 really, you know, give it a time trial. We didn't really have
3 time to do what I wanted, and I've got a beautiful litigation
4 board, that I'm not going to show you, of the time line that's
5 attached to Mr. Dubel's declaration. It's now in as Exhibit
6 311.

7 And I would ask Your Honor, when you're reviewing
8 this, and we'll certainly do it in the findings, that you take
9 a look at that, because we were very careful to only discuss
10 the process of the negotiations that happened in the mediation.
11 And when you look at just the before and after picture, Your
12 Honor, and if you see the fighting that went on beforehand, and
13 you were -- you had a front-row seat to that fighting that went
14 on, and the five-month mediation, and what came out the other
15 side, I think there is no way to make any conclusion that this
16 was extensive, hard-fought negotiation in good faith and that
17 everybody involved acted in their own client's best interests.
18 And it's just looking at the documents; look at the before and
19 after. And I love to rely upon Mr. Shore, and --

20 THE COURT: He's smiling.

21 MR. WYNNE: What?

22 THE COURT: He's smiling.

23 MR. WYNNE: I know. I knew he would. But if you
24 look, Your Honor, Exhibit 313, which is in evidence, is a
25 compilation of Exhibits that talk about the mediation. And Mr.

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1 Shore filed a pleading, docket number 2997, that's there, where
2 he was complaining about the mediation, that they had patiently
3 participated, they were hoping for a global compromise, and he
4 said, "Perversely, these well-intentioned efforts to achieve
5 consensus through mediation have seemingly emboldened certain
6 parties to harden their negotiating positions, secure in the
7 knowledge that the debtors' present plan construct with its
8 nonconsensual third-party release provisions with Ally remains
9 the only show in town."

10 THE COURT: I remember that pleading very well.

11 MR. WYNNE: Okay. Then I will stop reading, Your
12 Honor.

13 So what we have is, twenty-three parties signed the
14 plan support agreement, and a key predicate to that was FGIC
15 reducing its claims, and a very substantial reduction in its
16 claims. That's what we're here for. This settlement, while it
17 stands alone, it is the predicate to that. And so the same
18 parties that tell you you should count these billions of
19 dollars we're going to get from Country Wide, are basically
20 saying, but you should discount the ninety-two million dollars
21 that if this plan, that the twenty-three largest creditor
22 groups in this case came together and supported, after five
23 months of fighting, after eight months of fighting, that you
24 should totally just take that ninety-two million dollars and
25 ignore it.

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1 THE COURT: So I don't know -- and there is no direct
2 evidence on this, but I just was speculating in my own mind, if
3 the FGIC claim against the debtors was not reduced, and if it
4 wound up allowed in full, what dilutive effect it would have on
5 recovery of unsecured creditors in the case, what the ninety-
6 two million would become. It's just my speculation. There's
7 no direct evidence --

8 MR. WYNNE: Okay. That --

9 THE COURT: -- it is what it is.

10 MR. WYNNE: It is what it is, Your Honor. But that
11 really does point out -- and my last point, Your Honor. You've
12 really got that, sort of, dichotomy between the objectors. So
13 essentially, on the one hand, the investor objectors are saying
14 that FGIC could have gotten the --

15 THE COURT: Well, they thought they got not often, and
16 Mr. Shore thought they were getting too much.

17 MR. WYNNE: Exactly. Your Honor, with that, I'm done.

18 THE COURT: Thank you.

19 MR. WYNNE: Thank you, Your Honor.

20 THE COURT: Let me just -- hold on, Mr. Baio.

21 Mr. Kaufman, on behalf of the committee, wants to be
22 heard, briefly --

23 MR. KAUFMAN: Good afternoon, Your Honor.

24 THE COURT: -- briefly.

25 MR. KAUFMAN: Yes, briefly. Actually, Your Honor, as

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1 you know, I have remained silent during the course of these
2 proceedings, and was looking forward to the opportunity to
3 speak. Many of my colleagues have chided me that it must have
4 been very difficult for me to not speak. And now that I'm
5 here, purportedly batting cleanup, I find myself in the
6 position of having nothing to clean up.

7 THE COURT: Okay. So is that it?

8 MR. KAUFMAN: My colleagues did a wonderful job, and
9 for the reasons they have expressed, the committee fully
10 supports the approval of this settlement and entry of the
11 proposed findings in full.

12 THE COURT: Thank you.

13 Mr. Baio?

14 MR. BAIIO: Your Honor, may it please the Court;
15 Joseph Baio.

16 We will be submitting findings of facts and
17 conclusions of law which will detail the evidence that has been
18 provided and the absence of evidence that we think is fatal to
19 the movants and the findings that they are seeking.

20 Mr. Kerr said, I think, a remarkable thing in his
21 opening, and that was that, Your Honor, what we're asking for
22 here, from his perspective and from the perspective of the
23 movants, is a finding that the investors and the trust, as a
24 whole, are going to be benefitting to their best interests.
25 That is not what the finding says. And I will come back, again

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1 and again, in the findings -- I'm sorry; in the findings of
2 fact -- to what they are asking you to find, and that is that
3 the investors in each trust, that their -- the investors in the
4 trust, not just the trusts -- that their interests are being
5 served and that they acted in the best interest of the
6 investors in each trust. You do not have an evidentiary basis
7 for that, Your Honor, that they have provided, seeking that
8 finding as to those investors, and we will highlight that.

9 But let's talk about, also, the other finding, the
10 good faith and the best interests combined. What do we know,
11 now that we've actually had a trial? We do know that FGIC
12 lobbed in its commutation demand and 253 million dollar
13 proposed payment at the end of March of this year. It is
14 already an exhibit. We will identify it. And that was
15 unchanged from March 26th, when it was received, to the
16 analysis, to the present, unaltered. That's a fact. We don't
17 know what happened in the mediation, but we do know that.

18 What did the trustees do when that was lobbed in? And
19 they trumpet the fact that they have hired financial experts
20 and Duff & Phelps. Well, we have seen in many cases, Your
21 Honor, and I think Your Honor has as well, when you hire a
22 financial advisor and somebody has proposed a settlement to you
23 where they want to give you X, the financial analyst actually
24 analyzes whether, from a financial point of view, that
25 proposal, the dollar amount, is in the best interests. That

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1 was not done here. They did not hire Duff & Phelps to do an
2 evaluation as to whether this settlement is in the best
3 interests of the clients that hired them.

4 And what we're going to emphasize is the things that
5 they didn't ask Duff & Phelps to do, and what Duff & Phelps
6 didn't do. They did not evaluate the proposal, or Duff &
7 Phelps -- at least, we heard that from Mr. Pfeiffer --
8 negotiate its terms. They did not evaluate whether the
9 proposal is in the best interests of the trust. They didn't do
10 it. And by not asking them, the trustee shouldn't be able to
11 duck and cover. They could have asked that question, there
12 could have been an evaluation, and they decided not to. And I
13 think, Your Honor --

14 THE COURT: Well, the contents of the mediation are
15 protected by the mediation privilege or by the order entered.
16 So who said what to whom in the mediation is not part of this
17 record.

18 MR. BAIO: I understand. Your Honor, if there's one
19 thing I understand from what has happened, I completely
20 understand that, and I am not talking about that. I'm talking
21 about what the witness said he did, not in connection with the
22 mediation. He wasn't involved in negotiations; that's the
23 testimony.

24 And what he did do was, he didn't look behind the
25 forty percent haircut. Now, if you're normally the financial

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1 advisor for someone who gets a proposal lobbed in, which talks
2 about a forty percent haircut, you fight that. You don't
3 embrace it. You don't take it as a given. You don't do
4 another analysis that will justify that. You come up with
5 reasons why it is insufficient. This entire process has been
6 reversed, when you look at what Duff & Phelps does. And we
7 will emphasize that, Your Honor, in our papers.

8 What did the trustees do? The trustees actually bound
9 themselves to support the settlement agreement. They say --
10 and they trumpet the fact that we purportedly have the right to
11 make these objections and we are making these objections. At
12 the same time, they are duty-bound by contract to fight us, to
13 fight the beneficiaries of the trust. And within the agreement
14 that they signed -- and you heard Ms. Sohlberg testify about
15 this --

16 THE COURT: Well, you are a subset --

17 MR. BAIIO: Yes.

18 THE COURT: -- of the investors. And the fact --
19 substantial --

20 MR. BAIIO: Yes.

21 THE COURT: -- no doubt, substantial. But the fact
22 that your group of clients thinks it could have done better, or
23 perhaps, take another view, wants to hold 'em up to try and get
24 more, doesn't mean that the trustees didn't act in good faith
25 in what they believed was the best interests of the investors

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1 in agreeing to a settlement that was the bird in hand, versus
2 the uncertainty of the FGIC rehabilitation.

3 MR. BAIIO: And I understand that, Your Honor, and we
4 will talk about the bird in hand. We are not talking about we
5 could have done better in the settlement negotiation. What we
6 have demonstrated is that we, with a very high degree of
7 likelihood, will do better if we are allowed to participate in
8 the rehabilitation plan that we now know has been approved just
9 north of here.

10 Now, that was trumpeted, I think, by the other side,
11 as somehow favorable to them. Let me give you our perspective
12 on it, because, from our perspective, we've spent two weeks
13 hearing about Detroit, municipal horrors, the world will end,
14 the sky is falling. And yet, with all of that, no amendment to
15 the rehabilitation plan, no change whatsoever. And added 800
16 million dollars, supposedly, of lost reserves, no effect.

17 THE COURT: I don't know whether it's going to have
18 a --

19 MR. BAIIO: The amount --

20 THE COURT: That just happened, but --

21 MR. BAIIO: Right, well, so -- but the plan was
22 approved without any modification, Your Honor. The checks are
23 going to be written. They are going to start in 150 days. And
24 you heard that we're talking about seventeen percent. The
25 total that we're going to get, this magical -- eliminate all of

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1 the uncertainty, is a very small additional amount beyond that,
2 Your Honor.

3 And you did hear, also, that our claims are -- that
4 is, the trust's claims -- are largely ripened. That is,
5 they're entitled to get paid for those. Certainly there are
6 limitations as to how much FGIC has, but we're not saying that
7 we could have done better in negotiating with FGIC. We're
8 saying that the alternative to this settlement, which generates
9 253 million dollars, and actually decapitates the trust, not
10 from any claims that are in this bankruptcy, but in another
11 court, and you're being asked to find that they're in the best
12 interests of us for what happens in another court.

13 THE COURT: I guess Justice Ling-Cohan didn't think
14 much of your argument because she approved it.

15 MR. BAIIO: Well, Your Honor, she substantially limited
16 her findings. She said they are only --

17 THE COURT: She approved --

18 MR. BAIIO: -- limited here --

19 THE COURT: She approved the commutation. Her
20 findings are limited to her court, but she went ahead and
21 proved what was presented to her. She rejected your arguments.

22 MR. BAIIO: Without finding that it was in our best
23 interests, Your Honor. And that's what these findings are that
24 are presented to you. They're asking you -- the whole
25 purpose -- Ms. Sohlberg made it absolutely clear.

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1 THE COURT: What did Justice Ling-Cohan do?

2 MR. BAIO: She --

3 THE COURT: What do you think she did?

4 MR. BAIO: She now has appro -- she said that she's
5 limiting the findings, which is what we asked.

6 THE COURT: What did she do? What is the result of
7 her approval?

8 MR. BAIO: She has now approved the rehabilitation
9 plan, and at least with respect to the proceedings, the
10 commutation, but not binding us to say that the trustees did
11 not serve our interests. That's what we're talking about, Your
12 Honor. That's what we're talking about here. Our clients have
13 consideration in another court. We believe that we have
14 demonstrated that they will be the sacrificial lamb for
15 everyone else.

16 You've heard about the chaos that will descend on this
17 case if the settlement is not approved. There will be no chaos
18 in the FGIC rehabilitation as a result of that. We will start
19 getting checks. This matter, although we understand
20 that --

21 THE COURT: Are you appealing --

22 MR. BAIO: -- it may --

23 THE COURT: Are you appealing Judge Ling-Cohan's
24 ruling?

25 MR. BAIO: Probably. Yes. And we're going to pursue

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1 our client's rights, Your Honor.

2 THE COURT: Okay.

3 MR. BAIIO: And you know, we do believe that Ms.
4 Sohlberg, when she testified about why she included the
5 requirement that there be findings, she made it crystal clear
6 why that's in there, Your Honor.

7 THE COURT: It's crystal clear to me why they included
8 the findings, because otherwise you're going to turn around
9 tomorrow and sue all the trustees.

10 MR. BAIIO: And that's not for --

11 THE COURT: That's not a mystery to anybody.

12 MR. BAIIO: That's not for our benefit, though, Your
13 Honor. They didn't say that we should be thankful that they
14 have done this when they are specifically precluding us --

15 THE COURT: How many investors --

16 MR. BAIIO: -- from making the objection.

17 THE COURT: How many investors are there in the
18 FGIC-wrapped trust?

19 MR. BAIIO: I don't know, Your Honor, and there is no
20 evidence before you --

21 THE COURT: So there are four of you here.

22 MR. BAIIO: There are six. Your Honor, I'm sorry,
23 there are six. We have two CQS's --

24 THE COURT: Okay. All right.

25 MR. BAIIO: -- and we --

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1 THE COURT: Six.

2 MR. BAIIO: -- combine over twenty percent, and I don't
3 know, with FGIC we have a very large number.

4 THE COURT: All right. So there's six of you who are
5 objecting and complaining. There are others who didn't. Okay?

6 MR. BAIIO: Yes.

7 THE COURT: You've asserted your objections. I'm
8 listening to all the objections. I've taken the evidence.
9 I've got the arguments. I'm going to get proposed findings and
10 conclusions, and I'll reach a decision. You've had your
11 opportunity. But you know, it's no surprise to anybody why the
12 FGIC trustees insisted upon a finding that they acted in good
13 faith and in the best interests of the investors in approving
14 the settlement.

15 MR. BAIIO: Your Honor, we --

16 THE COURT: And I'll evaluate whether they did or they
17 didn't, and I'll make findings based on it.

18 MR. BAIIO: I understand that.

19 THE COURT: But, you know --

20 MR. BAIIO: Well, I'm arguing now --

21 THE COURT: I understand.

22 MR. BAIIO: -- that they have not met that test, Your
23 Honor. And in fact, we think it's unprecedented.

24 THE COURT: You make it sound astounding that they've
25 come and asked for this finding from the Court.

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1 MR. BAIIO: I've never seen it before, Your Honor.

2 THE COURT: Well --

3 MR. BAIIO: We've never seen it in any other case;
4 there is no precedent for this, to seek exculpation in a
5 bankruptcy court where we're not a creditor or we're not a
6 debtor --

7 THE COURT: I'm not exculpating anybody from anything.
8 I've been asked to make a determination. And somebody,
9 someday, can figure out what the implications of that are.
10 That won't be before me, okay? I've been asked to make a
11 finding. The requirement of it is included as a privilege in
12 the settlement. You've argued that I don't have the
13 jurisdiction to do it. They've all argued that I do. I'll
14 make that determination as well. Assuming I make the findings
15 that are requested of me, it'll be another court, some other
16 day, I supposed, that will determine what the impact of that
17 is.

18 MR. BAIIO: But Your Honor, just working off what you
19 had said, nobody's confused about why they asked for them,
20 because they don't want us to be able to sue. It's not for
21 some intellectual, theoretical approach that maybe some other
22 court will accept or not.

23 THE COURT: I don't think they have any doubt but that
24 you --

25 MR. BAIIO: That --

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1 THE COURT: -- would sue.

2 MR. BAIIO: Well, but that's my point, and that's the
3 question of whether they're acting in good faith in entering
4 into the settlement. And whether you can evaluate all of these
5 facts, including binding themselves to pursue this, and
6 unprecedented findings to hold our clients hostage.

7 THE COURT: Well, let me ask you. Let me assume that,
8 not you, not your clients, but some other investors, might be
9 characterized as strike suitors, and are threatening the
10 trustees, if you go ahead and approve this, we're going to go
11 ahead and sue you. And they say, you don't have the author --
12 you've argued this -- they don't have -- you said -- you argued
13 they don't have the authority to enter into this agreement.
14 They believe they do. Okay? I guess I'll make the decision
15 whether they did or not. Okay?

16 MR. BAIIO: Well, that's the point, Your Honor.
17 They're trying to make you make the decision, and we think it
18 should be another court, and we don't think they've --

19 THE COURT: And four years --

20 MR. BAIIO: -- proved their case.

21 THE COURT: -- from now you expect some state court
22 judge to make a decision whether they have the ability to enter
23 into an agreement, in a very fast-moving bankruptcy case that
24 I'm administering, where this affects the administration of the
25 bankruptcy case.

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1 MR. BAIIO: Where we are not a party; I understand
2 that, Your Honor.

3 THE COURT: Okay. All right. Go on with your
4 argument.

5 MR. BAIIO: I have nothing further, Your Honor.

6 THE COURT: Okay. Thank you, Mr. Baio.

7 Mr. Goodman.

8 MR. GOODMAN: Your Honor, Peter Goodman, on behalf of
9 Freddie Mac. I'm with McKool Smith.

10 I agree with Mr. Baio's comments. I'm not going to
11 retread already piled fields, but I do want to make some
12 points, and they do relate to the findings, Your Honor.

13 Freddie Mac believed it was at the negotiating table.
14 It had been at the negotiating table for three and a half
15 years. That was the testimony of Ms. Gina Healy. She's a vice
16 president of Freddie Mac, and she's a senior credit risk
17 manager.

18 We were in discussions with FGIC, we were in
19 discussions with the trustees. Now, the testimony of some of
20 the trustees clearly indicates that they knew Freddie Mac would
21 be interested in the topic that they were discussing, but
22 everyone throws up the mediation and the fact of the mediation
23 and the order of the mediation as something that blocked them
24 from communicating anything to Freddie Mac.

25 Now, one of the exhibits that was entered into

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1 evidence today is from Chris Johnson of the Kasowitz firm. He
2 was representing the FHFA with respect to claims against Ally
3 Bank, and I believe Your Honor's familiar with that.
4 Somehow -- somehow, the parties participating in the mediation
5 found a way to communicate with Mr. Johnson and tell him, as
6 you will read in the affidavit, you really should be in the
7 mediation that Judge Peck is conducting. And Mr. Johnson went
8 there. So there was a way -- it wasn't just a cone of
9 silence -- there was a way to communicate. And I think that's
10 a very important fact.

11 Now, with respect to the plan and disclosure
12 statement, we worked with Mr. Dubel. We worked with Mr. Gene
13 Kohn (ph.), who is the agent of the rehabilitator. We worked
14 with Weil Gotshal. The plan was clear what it would provide.
15 It provides that we had a pro rata share of available assets,
16 based upon our actual claims. We would get paid over time.
17 The plan was heavily vetted. I think Lazard Freres spent eight
18 months digging down into the financials to make sure --

19 THE COURT: Let's --

20 MR. GOODMAN: -- the numbers were accurate.

21 THE COURT: Let's stay in the record.

22 MR. GOODMAN: That is the record; that's from the
23 Miller affidavit, Your Honor.

24 THE COURT: All right.

25 MR. GOODMAN: And at the very last possible moment,

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1 the very last possible moment, less than a week, or maybe a
2 week prior to confirmation of the rehabilitation plan, the trap
3 door was pulled out from under us. The proposal came to us to
4 commute our policies.

5 THE COURT: The proposal came to who?

6 MR. GOODMAN: The proposal came to us, to Freddie Mac,
7 and to McKool Smith to commute the policies. We reviewed it.
8 The analysis isn't so straightforward. We had to understand
9 how many policies were effected, how many policies Freddie Mac
10 had concerning GMAC and ResCap. And the determination was made
11 to object to the plan.

12 We even tried to discuss with Mr. Dubel and with Mr.
13 Holtzer -- and this is in Ms. Healy's affidavit -- why it was
14 in Freddie Mac's best interests to enter into the settlement,
15 and we got back the wall of silence; this thing is going to go
16 to litigation and they can no longer talk to us, even though we
17 had not filed any objection or served any pleading, and we had
18 been working with them for three and a half years.

19 Now, the plan, in effect, as modified, is a zero sum
20 game. What they're taking from the ResCap side, they're giving
21 to the non-ResCap side. So all the upside from the Country
22 Wide litigation now goes to holders, non-ResCap securities
23 holders. So there's no real question here of why many parties
24 aren't objecting, because they benefit from this; it's a
25 zero-sum game.

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1 THE COURT: Is there any way of knowing, with
2 certainty, that you would be better off with the rehabilitation
3 plan payable -- paid out over forty years, versus the
4 commutation payment and the expected recovery from the ResCap
5 estate?

6 MR. GOODMAN: Well, that's what we believe our
7 analysis shows, and the analysis that is done by Mr. Gibson.
8 We believe that the assets of this -- not this estate, but the
9 rehabilitation estate was heavily vetted, the claims analyzed.
10 There was three and a half years of discussions regarding the
11 recoveries, information about their claims regarding Country
12 Wide/ResCap, and the expectation that we would start getting
13 immediate cash of seventeen and a quarter cents today, on
14 hundreds of millions of dollars of claims, billions. I mean,
15 the claim against FGIC, I believe, is about 1.6. The exposure
16 just on ResCap is 500 million.

17 So I don't believe that the trustees deserve the
18 findings that are proposed. I think the record is clear. I
19 don't want to retread what Mr. Baio said, but we will submit
20 findings of fact to Your Honor that the testimony, the
21 objective evidence clearly indicates that the trustees here
22 were just window dressing, and that's what they saw their role.
23 And if you are going to be window dressing, then you're not
24 entitled to these specific facts, whether unusual or not
25 unusual, whether given in any case, it's really irrelevant to

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1 the issue here, Your Honor. You have to earn something, and
2 you have to provide evidence that you've earned it. And I
3 believe that the evidence in this case cannot support a finding
4 that the trustees earned these findings of fact.

5 Thank you, Your Honor.

6 THE COURT: Thank you, Mr. Goodman.

7 Mr. Shore, are you next?

8 MR. SHORE: I promise not to bang the lectern. Bang
9 the lectern.

10 All right. Your Honor, we had three objections
11 originally, and obviously the objection to the ResCap, LLC
12 claim has been withdrawn. We just need to make sure any order
13 granting it makes clear that the motion with respect to that --
14 there's no claim allowance there and we've reserved our rights.

15 But let me focus, because we do have two remaining
16 objections. One is a process objection, and one is more of a
17 deal-oriented objection. Let me focus first on the minimum
18 claim amount and on the record that the debtors chose to create
19 on seeking the allowance of that. Different than you would get
20 in a normal 9019 setting, the record here is virtually opaque
21 as to what the debtors actually did because of the mediation
22 order. We didn't -- we haven't fought that. We understand the
23 ground rules. We'll raise the consequences of that in the
24 proposed finding of facts and conclusions of law, but that does
25 not mean the debtors were powerless to come to the Court and

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1 say this what we relied on, whether or not they had a financial
2 advisor prepare for them or Mr. Kruger a deck that says here
3 are the benefits of the settlement, here are the risks, here
4 are the damage calculations, or not, and whether that was used
5 in the mediation, that doesn't prevent the debtor s--

6 THE COURT: Let me ask you this. Is there any evidence
7 that contradicts Mr. Kruger's testimony that capping the FGIC
8 claim, two different outcomes, depending on whether the plan is
9 approved -- let's assume no plan is approved. He clearly
10 testified that he believed, in his business judgment, that
11 there was a benefit to the estate in capping that claim and at
12 the same time getting the release from the FGIC trustees.

13 MR. SHORE: And here's the problem; there's no
14 evidence in the record that he actually considered the issue.
15 Here's the problem. The debtors went out -- when they decided
16 that they weren't going to be putting on the evidence of what
17 actually got deliberated over, they went out and they hired Mr.
18 Lipps to do his report and Mr. D'Vari to do his report, and
19 they put together, essentially, what we call the virtual 9019.
20 This is what Mr. Kruger could have relied on, but for the
21 mediation order. The problem is, is there's some holes in that
22 virtual 9019. Let me focus on that. First of all, none of the
23 agreements have come in on the record. I don't know why they
24 haven't moved them into evidence. Your Honor has said, in MF
25 Global, you need all facts necessary for an intelligent and

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1 objective opinion as to the probability of ultimate success,
2 should the claim be litigated, I think, to conclusion. You had
3 no evidence of what the contracts are that are being resolved.
4 You have no evidence of the debtors' pre-petition activity
5 under those contracts. You didn't get a business person, who
6 actually was involved in any of this, pre-petition, or can
7 testify from personal knowledge as to what the contracts meant
8 and what the parties did under the contracts. And there are no
9 evidence of damages. Mr. D'Vari put forward something that
10 said there's a potential five billion dollar claim.

11 THE COURT: He talked about the collateral losses.

12 MR. SHORE: Right, collateral losses. And he says
13 specifically, and we didn't cross, and we didn't draw it to
14 your attention, in paragraph 2, "I do not express an opinion as
15 to the validity of a claim for collateral losses."

16 THE COURT: I'm aware of what --

17 MR. SHORE: Right.

18 THE COURT: -- I understand the issue.

19 MR. SHORE: We don't have Stillman or anybody else who
20 came in and said they could file a five-billion-dollar claim.
21 But we've looked at the contracts. We've looked at the
22 performance under the contracts. We've gone through the
23 contracts, even in a cursory fashion, to find out which loans
24 are nonconforming and which loans that need to put back, or the
25 debtors have a repurchase obligation on.

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1 So Your Honor is going to be left to speculate
2 entirely that even though there are 5 billion dollars of
3 collateral losses, 596 million dollars is within the range of
4 reasonable damage outcomes if they were permitted to sue for
5 these things. So that's the problem I see with the creation of
6 a virtual record for the minimum claim amount.

7 In addition, they don't deal with -- and I'll deal
8 with fraud and misrepresentation claims and servicing claims,
9 because I think they have the same defect on the proof -- they
10 don't focus on 510(b). It's a real issue. Mr. Lipps doesn't
11 deal with it. The debtors gave it the back of their hand.
12 They said they considered it, but did not come forward with any
13 kind of view as to the likelihood of success.

14 Let me talk about why that matters and kind of bleed
15 into the real objection right now. The 596, the minimum claim
16 amount is allowed as a general unsecured claim. The 596 times
17 3, that could occur if the plan isn't done, is also a general
18 unsecured claim. If Your Honor grants the settlement agreement
19 now, FGIC will be the only monoline within the case who will
20 have an allowed general unsecured claim if the plan does not go
21 forward. You're locking in, essentially, a plan treatment now
22 for a situation in which the plan isn't confirmed.

23 The 510(b) issue is going to have to be dealt with at
24 some point. Quite frankly, as you know, leading into the
25 mediation was the subject of the cross motions for summary

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1 judgment on the AIG parties. That's a real issue that has to
2 be resolved. And that's what our big --

3 THE COURT: And I know which side of that issue you're
4 going to be on if this settlement isn't approved.

5 MR. SHORE: You know what side?

6 THE COURT: Yeah.

7 MR. SHORE: Yeah. I think all general unsecured
8 creditors or allowed claim creditors within the case have views
9 as to whether or not those claims are entitled to a general
10 unsecured claim priority.

11 But so I get it about the global plan and everything
12 else. And again, by moving the ResCap LLC issues to
13 confirmation, we can deal with a lot of that then. But one
14 large aspect of this settlement agreement is dealing with what
15 if the global settlement doesn't close.

16 You have the 596-million-dollar allowance plus the
17 possibility of suit. So all -- I think Your Honor recognized
18 it -- all that comes back. Everything that Mr. Lipps said was
19 a benefit from getting rid of these claims comes back. And Mr.
20 Kruger testified on cross, he believes they will vigorously
21 prosecute their claims, whether they're 1.8 billion or limited
22 to 596 at the three estates, adding up to 1.8 billion.

23 And unlike any other RMBS holder --

24 THE COURT: Versus three claims of 1.8 billion.

25 MR. SHORE: Versus three claims of 1.8 billion.

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1 Although I would point out that the three claims of 1.8
2 billion, it's a bit of a misnomer. It is the same claim filed
3 against three estates, which would be capped at a 1.8-billion-
4 dollar recovery. But also, it assumes that claims that were
5 brought against GMACM under the GMACM agreements, can be
6 asserted against RFC and back and forth. It's essentially an
7 aggregation of the 596, which is something --

8 THE COURT: I understand that.

9 MR. SHORE: -- okay. The Ally indemnity claim, which
10 is another big issue. And I got accused of talking out of both
11 sides of my mouth, I'm just trying to respond to what the
12 debtors are saying.

13 It sounds like today they want a finding that the
14 indemnity issue is not an issue because Ally has no right of
15 indemnity --

16 THE COURT: They haven't asked for that, Mr. Shore.

17 MR. SHORE: Okay.

18 THE COURT: Mr. Kruger said yes, he considered it.
19 And he concluded what he concluded.

20 MR. SHORE: Right.

21 THE COURT: So yes, they considered that.

22 MR. SHORE: Right. And so until we get a
23 determination as to Ally's indemnity rights --

24 THE COURT: But if I followed your argument to your
25 conclusion, you could never settle anything, because you're

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1 saying until this is resolved you shouldn't settle it, until
2 that's resolved you shouldn't settle it. Parties settle
3 because they reach a judgment as to what they think is in their
4 best interests.

5 MR. SHORE: Right. And when they -- when the debtor
6 brings it to you they put a record on and they justify it to
7 Your Honor and give Your Honor the facts that are necessary for
8 you to make the determination --

9 THE COURT: That's what Mr. Kruger did.

10 MR. SHORE: And with respect to finality, they come in
11 and they seek finality. The notion of coming in and allowing
12 claims but then allowing the litigation to go on and not, at
13 the very least, protect yourself from the downside of the full
14 claim being asserted again. What they gave in the context of
15 the non-plan scenario is a floor of 596 with a general
16 unsecured claim that no other RMBS holder has, and they haven't
17 capped a ceiling unless -- unless it is found that the
18 indemnity risk isn't there. Because if the indemnity risk is
19 there, they are -- and let's be clear, it's not -- they're not
20 just -- not just the plan -- they're free at any time to assert
21 claims against Ally. And if Ally comes back, Ally's going to
22 start spending money; they're going to make claims under the
23 policies and deplete the policies, and then they're going to
24 make --

25 THE COURT: Okay, Mr. Shore, I had that ar -- I

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1 understand your argument.

2 MR. SHORE: All right, thank you, Your Honor.

3 THE COURT: Thank you very much.

4 All right. Mr. Siegel, Mr. Baio argued that I
5 don't -- there's no evidentiary basis that the settlement is in
6 the best interests of the investors in each trust. He said
7 that's the finding that you've asked for. Do I have any
8 evidence that the -- evidentiary basis to conclude that the
9 settlement is in the best interests of the investors in each
10 trust?

11 MR. SIEGEL: Your Honor, I would submit that you do.
12 And the reason I would submit that is while --

13 THE COURT: All right. So you'll give me in your
14 proposed findings --

15 MR. SIEGEL: That's fine, Your Honor.

16 THE COURT: -- the specific --

17 MR. SIEGEL: We're happy to do that.

18 THE COURT: -- Mr. Baio is going to submit his. I
19 just -- I don't want to hear -- I don't want to get into a
20 whole battle --

21 MR. SIEGEL: You don't want argument, you want it in
22 the findings.

23 THE COURT: -- argument. But I just -- that was
24 something very specifically that Mr. Baio raised, and I want to
25 be sure that when I read your proposed findings, that I see

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1 what it is you're relying on.

2 MR. GOODMAN: And we agree with Mr. Baio.

3 THE COURT: And I understand, Mr. Goodman --

4 MR. SIEGEL: I expected Mr. Goodman would agree with
5 Mr. Baio.

6 THE COURT: Okay, all right. Okay, thank you, Mr.
7 Siegel.

8 MR. SIEGEL: Thank you, Your Honor.

9 THE COURT: All right. It's 4:50. I have evidence --
10 all parties introduced their evidence. The evidence is closed.
11 I've heard argument from counsel. I've given a schedule for
12 proposed findings of fact and conclusions of law. I know there
13 was a daily transcript from yesterday. I see you don't have
14 your reporter here from today. I don't know how quickly you're
15 going to get the transcript from today.

16 I assume when I get the proposed findings, there will
17 be a transcript, there'll be page and line references to
18 testimony from today's testimony as there was from Friday's
19 testimony.

20 I'm overwhelmed with paper. I've got a lot of
21 reading. Tell me, when am I going to get the sheets of paper
22 that show the designations and counter-designations? I've got
23 some reading to do.

24 I think you know what I want --

25 MR. KERR: I know exactly what you want, Your Honor.

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1 THE COURT: -- I don't want nine pieces of paper.

2 MR. KERR: I need to corral --

3 THE COURT: Yes, you do.

4 MR. KERR: -- and I will -- can I make -- can I say
5 that we'll get it to you by 5 p.m. tomorrow.

6 THE COURT: I'll give you till noon on Thursday, how's
7 that?

8 MR. KERR: That's even better. It makes it a lot
9 easier, Your Honor. Thank you very much.

10 THE COURT: Okay.

11 MR. KERR: I was hoping to drive people to get it to
12 me by 5 o'clock tomorrow. But I'll give them till Thursday.
13 That's fine.

14 THE COURT: Well, you can drive, but I'm giving you
15 until Thursday at noon.

16 MR. KERR: Well, I want it by tomorrow.

17 THE COURT: Okay.

18 MR. KERR: Okay, thank you, Your Honor.

19 THE COURT: Are there any other housekeeping matters
20 that need to be raised at this point?

21 MR. KERR: I don't think so, Your Honor, except, I
22 have -- I just have one request. There's a lot of stuff in the
23 courtroom --

24 THE COURT: Oh, yeah.

25 MR. KERR: -- tonight. And do we need to get it out

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1 tonight or can we get it out --

2 THE COURT: No.

3 MR. KERR: -- tomorrow?

4 THE COURT: You don't. You can get it out tomorrow.

5 I do have a calendar tomorrow. But talk to my law clerks. My
6 courtroom deputy has left ill, and -- but talk to my law
7 clerks. You don't have to get them out today.

8 MR. KERR: And, Your Honor, we'll also -- we can -- do
9 you need us to provide you with a final list of exhibits that
10 are in evidence, or not?

11 THE COURT: I was just going to ask that. We've tried
12 to keep an accurate list, but I would like all of you to confer
13 and make sure you agree on all of the exhibits that are in
14 evidence. It would be helpful to me if you could provide me --
15 because I had your list -- I had a list from the proponents and
16 I had a list from the objectors. And we've been trying to keep
17 track from each of the lists which are in evidence. Confer. I
18 don't care whether I'm getting two -- essentially -- when I say
19 two pieces of paper, it was more than one page with each of
20 them -- but I do want to make sure there's agreement by all of
21 the parties as to which -- what is in evidence: testimony,
22 both deposition, written statements, et cetera. Okay?

23 MR. KERR: We will do that, Your Honor.

24 THE COURT: All right. Thank you very much everybody.

25 MR. KERR: Thank you.

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THE COURT: We're adjourned.
(Whereupon these proceedings were concluded at 4:53 PM)

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C E R T I F I C A T I O N

I, David Rutt, certify that the foregoing transcript is a true
and accurate record of the proceedings.



DAVID RUTT

AAERT Certified Electronic Transcriber CET**D 635

eScribers

700 West 192nd Street, Suite #607

New York, NY 10040

Date: August 20, 2013

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